6147. b 12

Dr BURN's

JUSTICE of the PEACE.

VOL. II.

THE

JUSTICE of the PEACE,

AND

PARISH OFFICER.

By RICHARD BURN, LL.D.
LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

Continued to the Preſent Time
By JOHN BURN, Eſq. his Son,
ONE OF HIS MAJESTY'S JUSTICES OF THE PEACE FOR THE COUNTIES OF WESTMORLAND AND CUMBERLAND.

THE NINETEENTH EDITION,
CORRECTED, AND CONSIDERABLY ENLARGED.
Including the late Adjudged Caſes, and the Statutes of the laſt Seſſion of Parliament (39 & 40 Geo. III.).

IN FOUR VOLUMES.

VOL. II.

LONDON:
PRINTED BY A. STRAHAN,
LAW-PRINTER TO THE KING'S MOST EXCELLENT MAJESTY;
For T. CADELL jun. and W. DAVIES, in the Strand;
and J. BUTTERWORTH, in Fleet-ſtreet.
1800.

Exciſe and Cuſtoms.

AS the cuſtoms and exciſe, ſo far as juſtices of the peace, conſtables, and other peace officers, are concerned therein, are in ſome meaſure connected and interwoven with each other; it is thought proper here to repreſent them together, that the reader may at once have a full and diſtinct comprehenſion of the whole.

I. Of the cuſtoms in general.
II. Of the exciſe in general.
III. Of the ſeveral particulars under the management of the commiſſioners of the cuſtoms and exciſe.

I. Of the cuſtoms in general.

By 27 *G.* 3. *c.* 13. after the 10th *May* 1787, all ſubſidies, cuſtoms, impoſitions, or duties whatever, reſpecting the *revenue of cuſtoms*, payable by virtue of any act or acts of parliament then in force, upon the importation of any goods, wares, or merchandize, *into Great Britain*; or upon the exportation thereof *from Great Britain*; or upon being brought or carried *coaſtwiſe* from port to port within the ſaid kingdom; and the ſeveral drawbacks allowed upon the exportation thereof, or on any account whatever reſpecting the duties of cuſtoms; and alſo the additional impoſts on duties charged upon the product and amount of the ſaid ſeveral duties of cuſtoms, *are repealed* except for recovering arrears. *ſ.* 1. Former duties repealed.

But the ſame ſhall not extend to any duties payable to the city of *London*, or any other city or town corporate in *Great Britain*. Or to repeal or alter the *priſage of wines*; the duty called *butlerage*; or the duty on *ſea coal* exported from *Newcaſtle*; or to any ſpecial privilege or exemption to which any perſon, bodies politick or corporate, are entitled by law. Nor to alter or affect any bounty or premium now payable out of the cuſtoms on importation or Exceptions.

exportation of any goods, wares, or merchandize, but the ſame ſhall continue to be paid and allowed as heretofore. *ſ.* 1, 30.

New duties.

And in lieu of the ſaid duties repealed, there ſhall be raiſed and collected, upon the importation of any goods or merchandize *into Great Britain*; or exportation *from Great Britain*; or carried *coaſtwiſe* as aforeſaid; the ſeveral duties of cuſtoms as deſcribed in ſchedules or tables annexed to the act, and marked *A. B. C. D.* and *E.* and drawbacks allowed as in the ſame are reſpectively inſerted. *ſ.* 2.

[But theſe ſchedules and tables being long, and not much connected with the office of a juſtice of the peace, it is not thought neceſſary to inſert them at large, but to refer to the act itſelf.]

To be recovered in the ſame manner as the old.

And the new duties and drawbacks ſhall be levied and allowed, in like manner as the old duties and drawbacks. *ſ.* 5.

Penalties to be recovered as by former acts.

And all penalties, fines, and forfeitures, (unleſs expreſsly altered by this act,) ſhall be recovered in like manner as by former acts directed: And all acts in force on 10th *May* 1787 relative to the cuſtoms, ſhall remain in full force, unleſs hereby altered. *ſ.* 6.

Goods landed before payment of the duties, ſhall be forfeited.

And by 27 *G.* 3. *c.* 31. All goods, wares, and merchandize, where any duties are impoſed by the ſaid act of 27 *G.* 3. *c.* 13. which ſhall be unſhipped, landed, or delivered out of any veſſel or boat before the duties are fully paid or ſecured, ſhall be forfeited, together with the package containing the ſame, and may be ſeized by any officer of exciſe. And every perſon who ſhall unſhip, land, or deliver, any ſuch goods for which the duties have not been paid or ſecured as aforeſaid, or ſhall be aiding or aſſiſting therein; or ſhall hide or conceal, or receive into his cuſtody any ſuch goods, knowing the ſame to have been ſo unlawfully landed: he ſhall forfeit treble the value thereof, to be eſtimated according to the higheſt rate goods of the beſt quality of that kind, ſhall then ſell for in *London*. *ſ.* 9.

And after 10th *May* 1787, the rules annexed to the two *books* of *rates* of 12 *C.* 2. and 11 *G.* 1. ſhall be repealed. 27 *G.* 3 *c.* 13. *ſ.* 31.

Appointing and ſwearing commiſſioners.

When any commiſſion ſhall be iſſued for conſtituting commiſſioners of the cuſtoms, two of them firſt named in the commiſſion ſhall be ſworn before the chancellor, or chief baron of the exchequer, or maſter of the rolls, *for the true and faithful execution, to the beſt of their knowledge and power, of the truſt committed to their charge and inſpection,*

and

and that they will not take or receive any reward or gratuity, directly or indirectly, other than their ſalaries, and what ſhall be allowed them from the crown, or the regular fees eſtabliſhed by law, for any ſervice to be done, in the execution of their employment in the cuſtoms, on any account whatſoever. 6 W. c. 1. ſ. 5.

And every other of the commiſſioners and patent officers, and every of their deputies, clerks, or ſervants, and all other officers who ſhall have any employment in or about the cuſtoms, ſhall at their admiſſion, if it is within the ports of *London*, take the ſaid oath before two commiſſioners; and elſewhere, before two juſtices of the peace in the county, town, or place, where his employment ſhall be; and every perſon not taking ſuch oath, ſhall forfeit his office. *Id.*

And the perſons hereby reſpectively authorized to adminiſter the oath, ſhall certify the taking thereof, to the next ſeſſions to be held for the county or place where the oath was adminiſtered, to be kept amongſt the records. *Id. ſ.* 6.

In what caſes they only can make ſeizure.

By the 13 & 14 *C.* 2. *c.* 11. No ſhip or goods ſhall be ſeized as forfeited for unlawful importation or exportation, or non-payment of cuſtoms, but by officers of the cuſtoms. *ſ.* 15.

But by the 8 *G. c.* 18. Spirituous liquors, *Britiſh* or foreign, and all foreign exciſeable liquors forfeited, together with the caſks or other package, may be ſeized by any officer of the cuſtoms or exciſe, or by ſuch perſons as ſhall be deputed by warrant from the lord treaſurer, or under treaſurer, or by ſpecial commiſſion under the great or privy ſeal, but by no other perſon. *ſ.* 24.

And by the 33 *G.* 2. *c.* 9. Officers of exciſe as well as thoſe of the cuſtoms, may ſeize all ſhips, veſſels, boats, wherries, pinnaces, barges, or gallies, liable to be forfeited for any of the reaſons contained in any of the acts of 8 *G. c.* 18. 11 *G. c.* 30. 12 *G. c.* 28. hereafter following, and proceed to condemn the ſame as the officers of the cuſtoms may do. *ſ.* 24.

And by the 9 *G.* 3. *c.* 6. The officers of exciſe may ſeize horſes or other cattle and carriages made uſe of in carrying brandy, arrack, rum, ſpirits, and ſtrong waters, (cuſtoms and other duties not being firſt paid or ſecured,) and proceed to condemnation thereof, in the ſame manner as officers of the cuſtoms may do.

Shipping or landing goods without warrant.

If any goods ſhall be laden or taken in from the ſhore, into any barge, hoy, wherry, or boat, to be carried aboard any

any ship outward bound; or laden or taken in out of any ship coming in from foreign parts without a warrant and presence of an officer of the customs; such barge, hoy, wherry, or boat shall be forfeited; and the wharfinger offending shall forfeit 100 l. and the master, purser, boatswain, or other mariner of any ship inward bound, consenting thereunto, shall forfeit the value of the goods so unshipped; half to the king, and half to him that shall sue. 13 & 14 *C.* 2. *c.* 11. *s.* 7.

And if any carman, porter, waterman, or other person, shall assist in the taking up, landing, shipping off, or carrying away, any such goods; such person being apprehended by the warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next gaol, there to remain till they find surety of the good behaviour for so long time until he be discharged by the lord treasurer, chancellor, under treasurer or barons of the exchequer; and for the second offence he may, by any justice of the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 5 l. for the king's use, or until he shall be discharged by the court of exchequer as aforesaid. *Id.*

Goods relanded after drawback.

If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debentures to be made forth for any such drawback, shall not be really and *bona fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officer of the port; then not only all such certificate goods shall be forfeited, but also the person relanding the same, or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double value of the drawback, together with the vessels, boats, horses, cattle, and carriages, made use of in landing or carrying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at *Westminster.* 8 *Ann.* *c.* 13. *s.* 16. But by a clause in 8 *G.* *c.* 18. the boats, cattle, and carriages, may be recovered before the justices of the peace (*a*).

(*a*) See *post* under this head.

By

By the 8 *Ann. c.* 7. If any goods ſhall be unſhipped, with intention to be landed, without paying cuſtoms, or if any prohibited goods ſhall be imported; then not only the ſaid goods ſhall be forfeited, but alſo the perſons aſſiſting or concerned therein, or to whoſe hands they ſhall come, ſhall forfeit treble value, together with the veſſels, boats, horſes, and other cattle and carriages; half to the king, and half to him that ſhall ſeize or ſue. *ſ.* 17.

Unſhipping with intent to land.

And by the 19 *G.* 3. *c.* 69. Any officer of the cuſtoms or exciſe, and their aſſiſtants, may arreſt perſons who ſhall be found aiding in and unſhipping any uncuſtomed or prohibited goods to be laid on land; and ſhall forthwith carry them before a juſtice reſiding near; who ſhall, if he ſee cauſe, commit the offender to the next county gaol, till the next general quarter ſeſſions. In which caſe, the officer ſhall enter into recognizance in 40l. to appear and proſecute. And the juſtices at ſuch ſeſſions ſhall hear and determine the offence, and in lieu of any other puniſhment by any former act, may commit the offender to hard labour in the houſe of correction, not exceeding three years, nor leſs than one. And the commiſſioners ſhall order the charges of proſecution to be paid by the receiver general of the cuſtoms or exciſe reſpectively. *ſ.* 8.

Any perſon authorized by writ of aſſiſtants out of the exchequer, may take a conſtable or other public officer near, and in the day time enter any houſe or place, and in caſe of reſiſtance break open doors, cheſts, and other package there to ſeize, and from thence to bring g ods prohibited and uncuſtomed, and ſecure them in the king's warehouſe. 13 & 14 *C.* 2. *c.* 11. *ſ.* 5.

Power to ſearch.

And whereas the officers of exciſe are by ſeveral acts empowered to ſeize tea and ſpirits removing without permits, together with the veſſels, boats, horſes, and carriages uſed in removing thereof: It is enacted by 24 *G.* 3. *c.* 47. *ſeſſ.* 2. that the officers of the cuſtoms ſhall have the like powers to ſeize and proſecute any ſuch tea or ſpirits ſo removed or removing. *ſ.* 29.

Officers of the cuſtoms empowered to ſeize tea and ſpirits.

If prohibited or cuſtomable goods ſhall be found by any officer of the cuſtoms, in a bark, boy, lighter, barge, boat, or wherry on the water; or coming directly from the water ſide, without the preſence of an officer; or if ſuch goods ſhall, on information of a credible perſon, be found in any houſe or place, on ſearch made as by the ſaid ſtatute of 13 & 14 *C.* 2. *c.* 11. ſuch officer may ſtop and put the ſaid goods in the king's warehouſe, until the claimer ſhall

Goods paſſing may be ſtopped and ſeized.

make proof before the commissioners, if it be in the port of *London*, that the duties have been paid or secured, or that the same had been bought in a lawful way of trade, and that such person verily believes the duties to have been paid, or that the said goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwise delivered, as aforesaid; in which case, the goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof and deliver the same to the collector, or in his absence to one of the other principal officers of the port, which proof shall forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for seizing the same and prosecution. 6 *G. c.* 21. *s.* 39.

Provided such proof be made within ten days; in failure whereof the goods may be seized and prosecuted as by the laws against the importation of prohibited or uncustomed goods. *s.* 40.

If on such prosecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and the question shall arise whether the duties were paid, or the goods had been compounded for, or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recovers his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. *s.* 41.

Where the claimer shall make proof, either by oath before a justice of the peace, or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner shall receive any damages by such stop; he may bring his action for his reasonable damages. *s.* 42.

But the officer, if he pleases, may prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery of his goods with full costs; or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. *s.* 43.

Goods taken in at sea.

If any foreign goods shall be taken in at sea, or put out of any ship within four leagues from the coast, without payment of the customs and other duties (unless in case

of

of neceſſity, or for a lawful reaſon, of which the maſter ſhall give immediate notice and make proof, before the chief officer of the cuſtoms of the firſt port where he ſhall arrive); the ſame ſhall be forfeited, and every perſon aiding or concerned therein ſhall forfeit treble value; and the veſſel into which the ſame ſhall be taken, ſhall be forfeited, not exceeding 100 tons; and the maſter of the veſſel out of which they are taken, ſhall alſo forfeit treble value; half to the king, and half to him that ſhall ſeize or ſue. 9 *G.* 2. *c.* 35. *ſ.* 23.

Veſſel hovering near the coaſt.

Where any veſſel coming from foreign parts, having on board any goods liable to forfeiture by any act now in force on being imported, ſhall be found at anchor, or hovering within the limits of any port, or within two leagues of the ſhore; or ſhall be diſcovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unleſs in caſe of unavoidable neceſſity and diſtreſs of weather, of which the maſter or other perſon having charge of the veſſel ſhall give notice and make proof before the collector or other chief officer of the cuſtoms, immediately after the arrival of the veſſel in ſuch port: all ſuch goods, together with the cheſts, boxes, caſks, and other package, or the value thereof, ſhall be forfeited, whether bulk ſhall have been broken or not; and the veſſel alſo, with her tackle and furniture, ſhall be forfeited, provided ſuch veſſel doth not exceed the burden of 50 tons; half the produce, after the ſale thereof, (charges deducted,) to be to the king, and half to the officer who ſhall make the ſeizure. 5 *G.* 3. *c.* 43. *ſ.* 38.

And by 24 *G.* 3. *c.* 47. *ſeſſ.* 2. If any ſhip ſhall be found at anchor, or hovering within the limits of any port; or within four leagues of the coaſt, and not proceeding on her voyage, wind and weather permitting, unleſs in caſe of unavoidable neceſſity (of which the commander ſhall give notice to the proper officer), having on board any brandy or other ſpirituous liquors, in any veſſel or caſk not containing 60 gallons (except only for the uſe of the ſeamen not exceeding two gallons for each), or having on board any wine in caſks (provided ſuch ſhip having wine on board ſhall not exceed 60 tons burden), or having on board 6lb. weight of tea, or 20lb. weight of coffee, or any other goods liable to forfeiture, not only all ſuch goods, but alſo the ſhip and tackle, ſhall be forfeited. *ſ.* 1.

Provided, that in any ſuit for forfeiture, evidence may be received to ſhew, from the ſmall quantity of goods, that

they were on board without the privity of the owner or master; and on proof thereof, such vessel shall not be forfeited, if of more than 100 tons burden. *s.* 2.

But the goods so found on board, whether with or without the privity of the master, shall be forfeited; and the person in whose possession or charge they shall be found, shall forfeit treble value. *s.* 3.

And all vessels, belonging in whole or in part to any of his majesty's subjects, called *cutters*, *luggers*, *shallops*, or *wherries* (of what built soever); or of any other description, whose bottoms are clench work, unless they shall be square rigged, or fitted as sloops, with standing bowsprits; or the length of which shall be greater than in the proportion of $3\frac{1}{2}$ feet to 1 foot in breadth [except vessels employed in the pilchard fishery duly licensed 25 *G.* 3 *c.* 58. *s.* 4.]; and all ships, belonging as aforesaid, armed for resistance; [And by 27 *G.* 3. *c.* 34. *s.* 1 the same is extended to *sloops*, *smacks*, or *yawls*, having a bowsprit which shall exceed in length more than two thirds of the length of such cutter, lugger, shallop, wherry, sloop, smack, or yawl, from the forepart of her stem, to the aft side of the stern post aloft, whether the same shall be a standing or running bowsprit]; which shall be found within the distance aforesaid; shall be forfeited, together with the goods laden thereon, and all her guns, tackle, and furniture. 27 *G.* 3. *c.* 47. *sess.* 2. *s.* 4.

And by 34 *G.* 3. *c.* 50. the same is further extended to *cutters*, *luggers*, *shallops*, *wherries*, *smacks*, or *yawls*, belonging in whole or in part to any of his majesty's subjects, of the built therein particularly described; [And by 35 *G.* 3. *c.* 31 *s.* 1. the same shall extend to all such vessels of what built soever they may be]; which shall be found to have been within the distance aforesaid, or hereinafter specified; shall be forfeited, together with the goods laden thereon and all her guns, tackle, and furniture. *s.* 7.

And if any vessel having on board any brandy or other spirituous liquors, in any cask not containing 60 gallons at the least (except for the use of the seamen not exceeding two gallons each), or having on board any wine in casks (provided such vessel having wine on board shall not exceed 60 tons burden), or having on board 6lb. of tea, or 20lb. of coffee, or any tobacco or snuff, which, taken together or separately, shall exceed one hundred weight; or any goods whatsoever liable to forfeiture, which shall be found at anchor, or hovering, or to have been hovering within the distance herein set forth; (that is to say,) within a supposed straight line from *Walney Island* in *Lancashire*, to

Great

Great Ormſhead in *Denbighſhire*; or from *Burdſey Iſland* in *Carnarvonſhire*, to *Strumble Head* in *Pembrokeſhire*; or from *The Lizard* in *Cornwall*, to *The Prall* in *Devonſhire*; or from *The Prall* aforeſaid, to *The Bill of Portland* in *Dorſetſhire*; or from *Cromer* in *Norfolk* to the *Spurn Head* in *Yorkſhire*; or from *Hambrough Head* in *Yorkſhire*, to *The Staples* in *Northumberland*; or from *The Mull of Galloway* in *Scotland*, to the point of *Ayre* in the *Iſle of Man*; ſuch veſſel not proceeding on her voyage (wind and weather permitting), unleſs in caſe of unavoidable neceſſity (of which notice ſhall be immediately given to the officers of the cuſtoms); then not only all ſuch goods, but alſo ſuch veſſel, with her guns, tackle, and furniture, ſhall be forfeited. *ſ.* 8.

And in caſe any open boat which ſhall be built for rowing or ſailing, or rowing and ſailing, belonging in whole or in part to any of his majeſty's ſubjects, and being of the length of 14 and under 18 feet, and the depth of which is greater than in the proportion of 1 ¼ inches to every foot in length, which ſhall be found within the diſtance aforeſaid, or upon land, the ſame ſhall be forfeited, and may be ſeized by any officer of exciſe or cuſtoms; unleſs ſuch boat ſhall have plank of three-fourths of an inch thick, and her timbers 1 ½ inches ſquare, and not more than nine inches diſtant from timber to timber; and if any ſuch boat by this act declared to be forfeited, ſhall be found on board or ſhall belong to any cutter, lugger, ſhallop, wherry, ſmack, or yawl, ſuch veſſel ſhall alſo be forfeited, and may be ſeized by any officer of exciſe or cuſtoms. *ſ.* 9.

But nothing in this act ſhall extend to *whale boats* employed in the whale fiſheries. *ſ.* 10.

And by 28 *G.* 3. *c.* 34. If any open boat, belonging in whole or in part to any of his majeſty's ſubjects, and being of the length of 23 feet and upwards, built and conſtructed for rowing or ſailing, or rowing and ſailing, the length whereof is greater than in the proportion of 3½ feet to one foot in breadth, found within four leagues of the land, or upon land in *Great Britain*; or being of the length of 18 feet, and under 24 feet, and the depth of which ſhall be greater than in the proportion of 1 ¼ inches to every foot in length, ſhall be forfeited, and may be ſeized by any officer of exciſe or cuſtoms, together with the ſhip or veſſel to which ſuch boat belongs. *ſ.* 10.

And all open boats, belonging as aforeſaid, of 24 feet and upwards, the depth of which ſhall be greater than in the proportion of one inch to one foot in length, may be ſeized as aforeſaid. *ſ.* 11.

But

But nothing herein shall extend to boats belonging to the navy, victualling, ordnance, customs, excise, or post-office, or used on any canal or inland navigation; or boats duly licensed; or boats built of timber and planks of certain dimensions, particularly set forth in the act. *s.* 12.

And by 34 *G.* 3. *c.* 50. if any *cutter*, *lugger*, *shallop*, *wherry*, *smack*, *yawl*, or boat, belonging as aforesaid, shall be found to have been within the distance by this act specified as aforesaid, which shall have on board any arms or ammunition, except duly licensed, the same shall be forfeited, together with the goods, tackle, and furniture, which may be seized by any officer of excise or customs. *s.* 11.

Provided, that nothing herein shall extend to any vessel on a voyage from *America*, or the *East* or *West Indies*, *Africa*, or the *Mediterranean*, so as to subject the same to forfeiture for having spirits, tea, coffee, tobacco, or snuff on board; nor to vessels employed in his majesty's service; or used solely on rivers, canals, or inland navigation; or duly licensed as directed by the said act of 24 *G.* 3 nor to vessels having arms or ammunition on board regularly entered and cleared; nor to vessels wholly and solely employed in the fisheries, having hooks or nets on board proper for carrying on the same. *Id.*

All penalties and forfeitures by this act imposed, are to be recovered and applied as is directed by the said act of 24 *G.* 3. *c.* 47. 34 *G.* 3. *c.* 50. *s.* 12.

And by the 19 *G.* 3. *c.* 69. When any tea, coffee, foreign spirituous liquors, or any goods whatsoever, are liable to forfeiture for being found on board any ship coming from foreign parts, at anchor, or hovering within the limits of any port, or within two leagues of the coast, or for having been discovered to have been within the limits of any port contrary to any act of parliament then in force; the ship, if coming from any part of Europe, together with her tackle and furniture, shall be forfeited, provided such ship doth not exceed 200 tons. *s.* 2.

And any officer of the customs or excise (producing his warrant of deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within the limits of the port; and if any person shall obstruct him, he shall forfeit 100*l.* 9 *G.* 2. *c.* 35. *s.* 29.

Importing in casks under size.

Where any foreign spirituous liquors shall be imported from any part of *Europe*, in any vessel not containing 60 gallons at the least (except only for the use of the seamen,

not

not exceeding two gallons each); the ſame, and alſo the ſhip, of whatever burden, with all her tackle and furniture, ſhall be forfeited. 19 *G.* 3. *c.* 69. *ſ.* 1.

Strength of ſpirits imported.

And no foreign ſpirits ſhall be imported ſtronger than one to nine over hydrometer proof (except from the ſugar plantations) on forfeiture thereof, with the caſks and package, which may be ſeized by any officer of exciſe or cuſtoms. 26 *G.* 3. *c.* 73. *ſ.* 44.

Importing wine.

And by 24 *G.* 3. *c.* 47. *ſeſſ.* 2. If any wine ſhall be imported or brought into *Great Britain*, in any ſhip, veſſel, or boat of leſs burden than 60 tons, the ſame ſhall be forfeited, together with the caſks and package, and alſo ſuch veſſel with her tackle and furniture. *ſ.* 17.

Penalty on the maſter, mate, or ſeamen.

Where the officers of cuſtoms or exciſe ſhall find on board of any ſhip coming from foreign parts, within the limits of any port of this kingdom, more than one hundred pounds weight of tea (not being an Eaſt India ſhip), or more than a hundred gallons of foreign brandy or other foreign ſpirituous liquors (over and above two gallons for every ſeaman), and being in caſks under 60 gallons; the maſter, or other perſon having charge of the ſhip, ſhall forfeit 300l. And the ſaid officers or their aſſiſtants may arreſt ſuch maſter or other perſon, and carry him before a juſtice reſiding near; who ſhall before the juſtice enter into a recognizance of 300 l. [with one ſufficient ſurety, 26 *G.* 3. *c.* 77. *ſ.* 9.] to appear in the court of exchequer within the firſt four days of the next term, to any information that may be exhibited againſt him: And the juſtice ſhall tranſmit the recognizance to the king's remembrancer in the ſaid court. And if ſuch perſon ſhall refuſe to enter into ſuch recognizance, the juſtice ſhall commit him to the next county gaol till he ſhall enter into ſuch recognizance. 19 *G.* 3. *c.* 69. *ſ.* 7.

And by the 21 *G.* 3. *c.* 39. If the maſter ſhall conceal, or ſuffer to be concealed by his mate or ſeamen, any quantity of foreign ſpirituous liquors above two gallons for each ſeaman, or tea above ſix pounds, or coffee above nineteen pounds; or clandeſtinely import, or ſuffer to be imported, any ſuch foreign ſpirituous liquors, or any other uncuſtomed goods whatſoever, whereby the owner becomes liable to any penalties, or the veſſel is liable to be forfeited: the maſter ſhall not only forfeit to the owner all his wages; but alſo treble value of ſuch ſpirituous liquors, tea, coffee, or other uncuſtomed goods, over and above the penalties to which the maſter ſhall be liable by any law now in

force; to be recovered of such master by the owner, to his own use.

And if the mates or seamen shall conceal or import any of the said goods, above the quantities so allowed as aforesaid; they shall forfeit to the owner their wages, and also 10s. for every gallon of spirituous liquors, and for every pound of tea or coffee: And if it be in time of war, the owner may send them for three years to serve on board any of his majesty's ships; unless they be old, disabled, or otherwise unfit. If it is in time of peace, and they shall not pay, and also if such person disabled shall not pay, on conviction, one justice may commit them to gaol, for three months, or not less than six weeks.

Provided, that the justices may mitigate the penalties under this act, so as not to remit above one moiety.

And a printed copy of this act shall be put up and continued on some conspicuous part of every British trading vessel; on pain of the master forfeiting to the owner 1s. a day for every omission, to be recovered by warrant under the hand and seal of one or more justices. [But no power is given to levy the same by distress.]

Persons lurking within five miles of the coast.

On oath made before a justice of the peace, that any person is lurking within five miles of the sea coast or any navigable river, and there is reason to suspect that he waits with intent to be aiding in running goods, the justice may grant his warrant to bring him before him; and if he shall not give a satisfactory account of himself and his employment, or otherwise make it appear that he is not concerned in any clandestine or unlawful business, he shall be committed to the house of correction, to be whipt and kept to hard labour not exceeding one month: And the commissioners of the customs or excise shall cause to be paid to the informer a reward of 20s. for each offender. 9 *G.* 2. *c.* 35. *s.* 18.

But if such person shall desire time for clearing himself, he shall not be punished by whipping or other correction, but committed to the common gaol till he shall so do, or till he find security not to be guilty of any the said offences. *s.* 19.

Buying or receiving run goods.

If any person shall knowingly receive or buy any run goods, he shall on conviction (after summons) by confession, or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 20*l.* half to the informer, and half to the poor, by distress; for want of distress, to be committed to prison for three months. 8 *G.* *c.* 18. *s.* 10.

And

And by the 11 *G. c.* 30. If any person shall knowingly, harbour, keep, or conceal, or suffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay customs; he shall (whether he claim any property in them or not) forfeit the same, and treble value, to be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. *s.* 16. Concealing run goods.

And if any person shall offer to sale any prohibited goods, or which have been, or are by him pretended to have been run; the same, together with the package, shall be forfeited, and be seized by the party to whom they are offered to sale, or by any officer of the customs or excise. Provided that if the seizure is within the bills of mortality, then within 24 hours, if elsewhere within 48 hours, they be put into the king's warehouse near the place of seizure; and if it be far from any such warehouse, then in some excise office near. *s.* 18. Offering to sale run goods.

And the person offering them to sale shall also forfeit treble value. *s.* 19.

And the said goods, if sold, may be seized (with the package) from the buyer, either by the seller or any such officer. *s.* 20.

And the buyer shall also forfeit treble value. But both buyer and seller shall not be prosecuted for the same goods, but whether of them shall first prosecute the other shall be discharged; but if prosecution shall not be commenced in a month, the warehousekeeper may prosecute. *s.* 21.

Which said forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. *s.* 39.

All porters, and others, knowingly carrying run or prohibited goods, and who shall be convicted (A, B, C.) thereof, (on appearance or default,) on the oath of one witness, or confession, before one justice where the offence shall be committed, or the offender found, shall forfeit treble value, half to the informer, and half to the poor, to be levied by distress (D) by warrant of such justice, and for want of distress to be committed (E) to the house of correction, to be whipt and kept to hard labour not exceeding three months. 9 *G.* 2. *c.* 35. *s.* 21. Porter carrying run goods.

By the 8 *G. c* 18. Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than five in number, or armed, or disguised, or who shall forcibly resist the officers of the customs or ex- Persons armed or disguised carrying run goods.

ciſe in ſeizing run goods, ſhall be guilty of felony, and tranſported for ſeven years. *ſ.* 6.

But if any offender ſhall in two months after his offence, and before conviction, diſcover his accomplices, ſo as two or more be convicted; he ſhall have a reward of 40l. if the value of the run goods exceed 50l. and ſhall be acquitted. *ſ.* 7.

And any other perſon diſcovering any one offender, in three months, ſo as he be convicted, ſhall have in like manner 40l. over and above what he may be entitled to on account of the ſaid run goods. *ſ.* 8.

By the 9 *G.* 2. *c.* 35. Perſons being two or more in company, who ſhall be found paſſing within five miles from the coaſt, or from any navigable river, with one or more horſes, or with any cart or carriage, whereon there ſhall be laden more than ſix pounds of tea, or ſpirituous liquors exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30l. value, landed without entry and payment of duties, and ſhall carry any offenſive arms, or wear any diſguiſe, or ſhall forcibly obſtruct or reſiſt any officer of the cuſtoms or exciſe in ſeizing or ſecuring any prohibited, uncuſtomed, or run goods, or other execution of their office, ſhall be deemed runners of foreign goods, within the meaning of the ſaid act of 8 *G. c.* 18. although no proof ſhall be made that ſuch goods were run, or had not been entered and paid duty; but the proof of ſuch entry and payment, and how they came by the goods, ſhall lie on ſuch perſons; and every perſon convicted of any ſuch offence, ſhall be guilty of felony, and tranſported for ſeven years. *ſ.* 13.

And all the goods ſo found, weapons, horſes, cattle, carriages, and their furniture, cheſts, bags, caſks, and other package ſhall be forfeited. *ſ.* 14.

And if any officer or other perſon ſhall loſe any limb, or be otherwiſe maimed or dangerouſly wounded by any offender laſt mentioned, or in endeavouring to apprehend him, he ſhall on the conviction of ſuch offender have a reward of 50l. over and above any other reward he may be entitled to by this act. *ſ.* 15.

And if any perſon be killed in endeavouring to apprehend ſuch offender, his executors or adminiſtrators (on certificate under hand and ſeal of the judge of aſſize for the county where the fact was done, or of the two next juſtices of the peace, of ſuch perſon being ſo killed) ſhall

have

have 50l. over and above any other reward they may be entitled to by this act. *ſ.* 15.

And if any perſon ſhall in three months after ſuch laſt mentioned offence committed, diſcover to the commiſſioners of the cuſtoms or exciſe, any offender ſo as he be convicted; he ſhall have 50l. over and above any other reward he may be entitled to by any law. *ſ.* 16.

And the commiſſioners of the cuſtoms or exciſe ſhall cauſe the rewards to be paid out of the ſaid revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing ſuch certificate of the perſon being killed: and if any diſpute ſhall ariſe between the perſons entitled to the reward, the ſame ſhall be adjudged by the commiſſioners. *ſ.* 17.

And by the 19 *G.* 3. *c.* 69. If any perſons to the number of two or more, ſhall be found paſſing with any horſe, cart, or carriage, whereon ſhall be laden more than ſix pounds weight of tea, or foreign ſpirituous liquors exceeding five gallons, not having paid the duty, and not having a permit; and ſhall carry any offenſive arms, or wear any diſguiſe, when paſſing with ſuch tea or ſpirituous liquors: any officer of the cuſtoms or exciſe, and all other perſons acting in their aid, may arreſt the offenders, and carry them before a juſtice, who (if he ſees cauſe) ſhall commit them to the next county gaol, till the next general quarter ſeſſions. And in ſuch caſe, the officer who conveys any ſuch offender before the juſtice ſhall enter into recognizance in 40l. to appear and proſecute. And the commiſſioners ſhall order the charges of proſecution to be paid by the receiver general of the cuſtoms or exciſe reſpectively. And the juſtices, at ſuch ſeſſions, ſhall hear and determine the offence. And if the offender be convicted, they ſhall, in lieu of any other puniſhment by any former act, commit him to hard labour in the houſe of correction, not exceeding three years, nor leſs than one. *ſ.* 9 —— 15.

Apprehending riotous ſmugglers.

And upon information on oath before a juſtice of the peace, that any perſons to the number of three or more, are or have been aſſembled, to be aiding in the clandeſtine running, landing, or carrying away prohibited and uncuſtomed goods, or to reſcue them after ſeizure, and armed with fire arms or other offenſive weapons; he ſhall grant his warrant to the conſtables and other peace officers, requiring them to take to their aſſiſtance as many as may be thought neceſſary for apprehending ſuch perſons: and he may, if on examination he finds cauſe, commit them

to

to the next county goal, there to remain without bail or mainprize, until they be discharged by due course of law: and such persons, on conviction of their being assembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for seven years. 9 G. 2. c. 35. s. 10.

And the apprehender for every person convicted shall have a reward of 50l. immediately after conviction and demand made, tendering a certificate under the hand of the judge certifying the conviction, and that he was taken by the person claiming the reward. s. 11.

And if any person shall lose a limb, be maimed or dangerously wounded, in apprehending or endeavouring to apprehend, or pursuing such offender; he shall on such conviction have a reward of 30l. over and above any other reward that he shall be entitled to by this act. *Id.*

And if any person shall be killed in taking or endeavouring to take such offender; his executors or administrators (on certificate under the hand and seal of the judge of assize of the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50l. over and above any other reward they may be entitled to by this act. *Id.*

And if any offender shall in three months after his offence, and before his conviction, discover two or more accomplices, to the commissioners of the customs or excise, so as to be convicted; he shall have 50l. for every person so convicted, and be discharged of his offence. s. 12.

The said rewards to be paid as in the last section.

Outlawed smugglers.

By the 19 G. 2. c. 34. If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any officer in the seizing such goods, or dangerously wound any officer attempting to go on board any vessel, or shoot at or wound him when on board; he shall be guilty of felony without benefit of clergy. s. 1.

And perſons charged with any the ſaid offences, before a juſtice of the peace, by information on oath of one or more credible perſons to be ſubſcribed by him or them, the juſtice ſhall forthwith certify the ſame under his hand and ſeal, and return the information to one of the ſecretaries of ſtate, who ſhall lay the ſame before the king in council; who may thereon make his order, commanding the offender to ſurrender in 40 days after the firſt publication thereof in the gazette, to the lord chief juſtice, or any other of the juſtices of the king's bench, or to ſome juſtice of the peace, who thereon ſhall commit him to gaol, to anſwer the charge againſt him according to due courſe of law: Which order the clerks of the privy council ſhall cauſe to be forthwith publiſhed in the two ſucceſſive gazettes, and to be tranſmitted to the ſheriff where the offence was committed; who ſhall in 14 days cauſe the ſame to be proclaimed between ten in the morning and two in the afternoon, in the market places, on the market days of two market towns in the ſame county, near the place where the offence was committed; and a copy of the order ſhall be affixed on ſome public place in the ſaid towns: And if ſuch offender ſhall not ſurrender purſuant to ſuch order, or eſcape after ſurrender, he ſhall be attainted of felony without benefit of clergy. *ſ.* 2. 24 *G.* 3. *c.* 47. *ſeſſ.* 2. *ſ.* 12.

And if any perſon after the time appointed for ſurrender, ſhall knowingly harbour ſuch offender; he ſhall, on conviction within one year, be guilty of felony, and tranſported for ſeven years. 19 *G.* 2. *c.* 34. *ſ.* 3. 24 *G.* 3. *c.* 47. *ſeſſ.* 2. *ſ.* 13.

And every perſon who ſhall take, or diſcover ſo that he may be taken, any perſon ſo advertiſed and not ſurrendering, and cauſe him to be brought before a judge of the king's bench, or juſtice of the peace for *London* or *Middleſex* (who ſhall commit him to *Newgate*), ſhall receive 500l. in one month after execution awarded, from the commiſſioners of the cuſtoms or exciſe reſpectively: And if any offender, againſt whom no ſuch order in council ſhall have been made, ſhall himſelf ſo diſcover or apprehend any other againſt whom an order hath been made; he ſhall be acquitted of all his own offences for which no proſecution is then commenced, and ſhall alſo have his ſhare of the præmium: And if any perſon ſhall be maimed or grievouſly wounded in apprehending ſuch offender; he ſhall receive 50l over and above ſuch other reward as he may have as apprehender: And if any perſon ſhall be killed

in apprehending, his executors or adminiſtrators ſhall receive 100l. *ſ.* 10.

But nothing herein ſhall prevent miniſters of juſtice from taking ſuch offender by the ordinary courſe of law; but if he ſhall be taken before the expiration of the time limited for his ſurrender, no further proceedings ſhall be had upon the order made in council, but the offender ſhall be brought to trial by due courſe of law. 19 *G.* 2. *c.* 34. *ſ.* 4. 24 *G.* 3. *c.* 47. *ſeſſ.* 2. *ſ.* 14.

And if any offender, before order for his ſurrender, ſhall diſcover two or more accomplices, ſo as they be convicted; he ſhall receive 50 l. for each, and be diſcharged of all offences for which no proſecution ſhall be then commenced. 19 *G.* 2. *c.* 34. *ſ.* 11.

In the caſe of *John Harvey*, *E.* 20 *G.* 2. The attorney general, ſuggeſting the ſeveral particulars to have been complied with as in this act ſpecified, prayed that execution might be awarded according to the ſaid act. The defendant traverſed all the facts contained in the ſuggeſtion. On which, at another day, the attorney general went into the proof of the ſeveral iſſues.—The ſeveral facts touching the laying the information before the juſtice (Mr. *Burdus*) againſt the priſoner and others; his certifying it in due manner to the duke of *Newcaſtle*, ſecretary of ſtate; the duke's laying it before the king in council; the order of council (which was produced under the ſeal of the council) requiring the priſoner and others to ſurrender within 40 days after publication in the *London* gazette; the tranſmitting this order to the printer of the gazette; the publication of it in due time in two ſucceſſive gazettes; and the tranſmitting it to the ſheriff of the county of *Suffolk*, in order to its being proclaimed and publiſhed as the act directeth,—were well proved. Then the under-ſheriff of *Suffolk* and other witneſſes were called to prove the proclaiming and fixing up the order in two market towns near *Beauacre*, the place where the fact is charged in the information taken by Mr. *Burdus* to have been committed. And it appeared on their evidence, that it was proclaimed and fixed up at *Ipſwich*, which is 30 miles from *Beauacre*; at *Hadley*, which is 42 miles from *Beauacre*; and at *Leoſtaff*, which is 5 miles from *Beauacre*; and at no other places: and that there are five or ſix market towns nearer to *Beauacre*, than *Ipſwich*; particularly *Southwould* 5, and *Beacles* 8 miles.—Mr. *Ford*, aſſigned counſel for the priſoner, inſiſted that the act had not been complied with. The act indeed doth not ſay

that it shall be in the *next* market towns, but still it must be in the market towns *near* the place. And the distance of 30 miles cannot with any propriety be called *near*, when it appeareth, that there are at least three market towns within a third part of that distance.—And of this opinion was the court. This, they said, is a very penal law. And it would be of dangerous consequence to give the sheriff a greater latitude, than the legislature intended to give him. Some latitude it did intend to give, and therefore did not confine him to the *next* market towns, because that would have rendered the execution of the act difficult, and subject to great niceties. But the law did not intend to leave the matter wholly to the discretion of the sheriff, and therefore it requireth that it be done in the market towns *near* the place. This word is plainly restrictive of the sheriff's power. It is a guide to his discretion in the execution of the act. And what doth it mean? Not surely the most remote town; nor doth it mean a town comparatively remote, as it is plain from the evidence *Hadley* and *Ipswich* are.——On the whole; the court, without summing up the evidence, directed the jury to find for the king, on all the issues, except those which regarded the proclamations in the market towns near *Beauacre*; and on those to find for the prisoner, which they did. And then the court ordered, that the attorney general take nothing by his prayer. And that the prisoner be remanded to *Newgate*, in order to answer for the original offence he stands charged with in the information taken by Mr. *Burdus*, if the attorney general shall think fit to indict him for it. *Fost.* 51.

Note; This act of the 19 *G.* 2. *c.* 34. is but temporary; and it having been doubted (4 *Black.* 155) whether this part relating to the surrender upon proclamation be not expired, because the several acts which have continued the same from time to time do not continue the whole, but only so much thereof as relates to the *punishment* of the offenders, and not to the extraordinary method of apprehending or causing them to surrender: Therefore it is declared and enacted, by the 19 *G.* 3. *c.* 69. that all and every the orders and directions relative to the surrender, proclaiming, apprehending, harbouring, and pnnishing offenders were continued and re-enacted by the said several acts of continuance, and may be lawfully exercised and used accordingly. *s.* 23.

And by the 28 *G.* 3. *c.* 23. the said act of 19 *G.* 2. *c.* 34. is further continued till 29th *Sept.* 1795.

Felonies may be tried in any county.

Offences relating to the cuſtoms or exciſe, made felony by any act of parliament, may be tried in any county; but the attainder ſhall work no corruption of blood, loſs of dower, or forfeiture of lands. 19 *G.* 2. *c.* 34. *ſ.* 5.

Obſtructing officers.

If any perſon ſhall obſtruct any officer of the cuſtoms or exciſe, in ſeizing uncuſtomed or prohibited goods; or ſhall reſcue or attempt to reſcue the ſame; or, after ſeizure, ſhall deſtroy or damage any caſks, boxes, or package wherein the ſame ſhall be contained; ſuch officers, or perſons acting in their aid, may arreſt the offender, and forthwith carry him before a juſtice near to the place where the offence was committed: and the juſtice ſhall, if he ſees cauſe, commit him till the next general quarter ſeſſions; where, if he ſhall be convicted, he ſhall be committed to the houſe of correction to hard labour, not exceeding three years, nor leſs than one. 19 *G.* 3. *c.* 69. *ſ.* 10, 11, 12.

And if any officer of the navy, cuſtoms, or exciſe, ſhall be hindered, oppoſed, obſtructed, or aſſaulted, in the due execution of his office [or other perſon acting in his aid or aſſiſtance, 34 *G.* 3. *c.* 50. *ſ.* 5.] by any perſon whatſoever; the offender may be carried before a neighbouring juſtice, who may commit him to gaol until the next general gaol delivery, or until delivered by due courſe of law; and if he ſhall be convicted, he ſhall be ſentenced to hard labour on the river *Thames* for any term not exceeding three years. But if the offence falls within the proviſions of 19 *G.* 3. *c.* 69. ſuch juſtice may commit ſuch offender to gaol until the next quarter ſeſſions, to be tried and puniſhed as by that act directed. 24 *G.* 3. *c.* 47. *ſeſſ.* 2. *ſ.* 15, 16.

And by 26 *G.* 3. *c.* 77. Whenever any perſon ſhall be charged with aſſaulting or obſtructing any officer of the cuſtoms or exciſe in the execution of his office, or perſon acting in his aid; or with reſcuing or attempting to reſcue by force prohibited goods after ſeizure; or of any offences reſpecting quarantine; and the ſame ſhall be made appear to any juſtice of the king's bench; he may by warrant cauſe ſuch offender to be brought before him or ſome other judge of the ſaid court, or before one juſtice of the peace, in order to be bound with two ſureties in ſuch ſum as the ſaid warrant ſhall expreſs, to appear in the ſaid court at the time mentioned in ſuch warrant, to anſwer the premiſes; and for want of ſuch ſureties, ſuch judge or juſtice may commit ſuch perſon to the common gaol, until he ſhall have become bound, or be diſcharged by order of

ſuch

ſuch court; and the recognizance ſhall be returned and filed in the ſaid court, and ſhall continue in force until ſuch perſon be acquitted, or receive judgment, unleſs ſooner diſcharged. *ſ.* 18.

Bail.

And if any perſon ſhall be taken before a juſtice, for what is by this act deemed a *miſdemeanour*, ſuch perſon ſhall not be admitted to bail, unleſs he enter into recognizance with two ſufficient ſureties, himſelf in 200l. and ſuch ſureties in 100l. each, to appear at the next general gaol delivery, and anſwer to any indictment which may be found againſt him, which recognizance ſhall be forthwith tranſmitted to the clerk of aſſize. 24 *G.* 3. *c.* 47. *ſeſſ.* 2. *ſ.* 19.

Officers may oppoſe force with force.

If any perſon paſſing in a public and avowed manner with prohibited or uncuſtomed goods, and armed with piſtols, guns, cutlaſſes, or other offenſive weapons, ſhall moleſt or reſiſt the officers of the cuſtoms or exciſe, endeavouring to ſeize the ſame, by beating, maiming, or wounding them, or any perſon aſſiſting them; they may oppoſe force with force: And if any perſon ſo reſiſting the officers be wounded, maimed, or killed, ſuch officers, or perſons aſſiſting them in their defence, may plead the general iſſue, and give this act and the ſpecial matter in evidence; and all juſtices of the peace, and others, before whom they ſhall be brought, ſhall admit them to bail. 9 *G.* 2. *c.* 35. *ſ.* 35.

Dangerouſly hurting an officer, finable.

By the 13 & 14 *C.* 2. *c.* 11. Where any officer or officers of the cuſtoms ſhall be by any perſon armed with club or any manner of weapon, forcibly hindered, affronted, abuſed, beaten, or wounded, to the hazard of their lives, either on board any ſhip, or on the land or water, in execution of their office; every perſon ſo abuſing any ſuch officer or his deputy, or ſuch as ſhall act in his aid or aſſiſtance, ſhall by the next juſtice or other magiſtrate be committed to priſon to the next quarter ſeſſions; and the ſaid ſeſſions ſhall puniſh him by fine, not exceeding 100l. and the offender to remain in priſon, till he be diſcharged by order of the exchequer both of the fine and of the impriſonment, or diſcover the perſon that ſet him on work. *ſ.* 6.

By eight or more, tranſportation.

And by the 6 *G.* *c.* 21. If any officer of the cuſtoms be forcibly hindered, wounded, or beaten, in the due execution of his office, by any perſons armed with any manner of weapon, tumultuouſly aſſembled by day or night, to the number of eight or more; the offenders ſhall be

transported for any term not exceeding seven years. *s.* 34, 35.

And if any offender shall in two months after his offence, and before conviction, discover his accomplices so as to be convicted, he shall have 40l. reward for each, and be acquitted. *s.* 36.

And if any other person shall in three months discover any offender so as he be convicted, he shall have 40l. over and above any other reward on account of the run goods. *s.* 37.

The same to be paid by the receiver general, or cashier of the customs, on producing the judge's certificate. *s.* 38.

Opposed on shipboard, transportation.

And by the 9 *G.* 2. *c.* 35. more generally it is enacted, that if any officer of the customs or excise, being on board any ship, be forcibly hindered, wounded, or beaten, in execution of his office, either by day or night; the offender shall be transported for seven years. *s.* 28.

Hundred shall answer damages.

And by the 9 *G.* 2. *c.* 34. *s.* 6. If any officer or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten or killed, or the goods seized be rescued; the hundred shall answer damages, and also pay 100l. to the executors or administrators of such person killed, so as the sum for beating exceed not 40l. nor for the loss of goods 200l. to be recovered and levied as in cases of robbery by the 8 *G.* 2.

But no person shall recover damages for such beating or loss of goods, unless he give notice in four days, to two inhabitants near, and in eight days make oath before a justice, whether he knew any of the persons concerned, and if he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such notice and enter into such recognizance as persons robbed by the 8 *G.* 2. are directed to give. *Id. s.* 7.

And where the offender shall be convicted in six months, the hundred shall not be liable. *s.* 8.

Also the action against the hundred must be commenced within a year. *s.* 9.

Penalty on officers not doing their duty.

If any officer of the customs or excise shall not use his best endeavours to seize any tea, coffee, or foreign spirituous liquors, or to stop, detain, and carry before one or more justices any offender; in such case, one justice residing near to the place where such officer shall make

default,

default, on complaint thereof made to him within three months after such default, may examine into the truth of such complaint: and if it shall appear to the said justice that there is reasonable ground for the complaint, he shall transmit the said complaint, together with the examinations taken before him thereon, unto the commissioners of the customs or excise respectively; who shall, by such ways and means as to them shall seem meet, examine into the truth of the premises. And in case they shall think fit on the ground thereof to dismiss the officer from his majesty's service, he shall be incapable of executing any office in the customs or excise for the future.—— Provided, that no person shall be compelled to go above five miles from his usual place of abode, to be examined before any justice, upon any complaint made to him as aforesaid. 19 *G.* 3. *c.* 69. *s.* 32.

Power of the justices in recovering penalties.

And here it may be proper to take notice of a general clause in the statute of 8 *G. c.* 18. which brings the cognizance of many forfeitures under the jurisdiction of the justices of the peace; and consequently enlarges considerably this title relating to the customs: (to wit,) In regard that the keeping and maintaining the horses seized, from the time of the seizure, to the time of condemnation in the court of *exchequer*, is very chargeable, and the charge of condemning such vessels, boats, and horses, is very great; therefore it is enacted, that all seizures of vessels or boats of 15 tons or under, by virtue of any act relating to the *customs*, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all seizures of horses, or other cattle, or carriages for carrying such goods, may be heard and determined in such manner as is appointed by the act of 6 *G. c.* 21. *s.* 20. except as therein excepted; that is to say, All such seizures may in a summary way be determined by two justices of the peace residing near the place where the seizure is made; who shall summon the party accused, and on appearance or default proceed to hear and give judgment, and issue warrants for sale of such as shall be by them condemned: whose judgment shall not be liable to any appeal or *certiorari*. 8 *G. c.* 18. *s.* 16.

And by 24 *G.* 3. *c.* 47. *sess.* 2. All seizures of horses, cattle, carts, waggons, boats, and carriages whatsoever, for being used in the removing, carriage, or conveyance of any goods, or for any other cause of forfeiture contrary to this or any other act relating to or for preventing frauds in the revenue of the customs; may be heard and determined

mined by two neighbouring justices, in such manner, and under the like rules as the seizure of any horse, cattle, or carriage liable to forfeiture for being used in removing, carrying, or conveying of any prohibited or run goods by virtue of any act of parliament. And such judgment shall be final, and not liable to any appeal, or any writ of *certiorari*. *s.* 30.

Justices on trial to proceed on the merits.

And by the 9 *G.* 2. *c.* 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *s.* 34.

Officer on trial need not prove his commission.

And if any question shall arise, whether any person be an officer of the customs, proof shall be admitted, that such person was reputed to be, and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission. 11 *G.* *c.* 30. *s.* 32.

Proof to lie on the owner.

And if any dispute shall arise, whether the customs have been paid; the proof shall lie on the owner, and not on the officer. 12 *G.* *c.* 28. *s.* 8.

Goods forfeited may be restored.

And in case of any goods whatsoever, or any ships, vessels, boats, horses, cattle, or carriages, being seized as forfeited by virtue of any law relating to the customs; the commissioners, on evidence given to their satisfaction, that the forfeiture arose without any intention of fraud in the owner, may restore the same, in such manner, and on such terms as they shall direct; and if such owner shall comply with the terms prescribed by the said commissioners, the officer who seized the same shall not proceed for the condemnation thereof; but if such owner shall not comply with the terms prescribed, such officer shall be at liberty to proceed for condemnation of such goods, *&c.* But such owner accepting such terms, shall not be entitled to any damages on account of such seizure. 27 *G.* 3. *c.* 32. *s.* 15.

Masters of ships detaining certificates.

And by 28 *G.* 3. *c.* 34. *s.* 13. after reciting that it has been found, that masters of ships have wilfully and maliciously detained certificates granted in pursuance of 7 *&* 8 *W.* 3. *c.* 22. and 26 *G.* 3. *c.* 60. it is enacted, That in case the owner of any vessel, whose certificate of registry shall be so detained and refused to be delivered up; [or in case the master of any vessel, who shall have received the certificate of the registry thereof (whether he be a part owner or not), shall wilfully detain and refuse to deliver up the same to the officers impowered to make registry and grant a certificate thereof, on the owner or owners, or the major part of them, if such master has not any property therein,

therein, or on the other owners, or the major part of them, if such master hath any share or property therein, requiring him so to do, 34 G. 3. c. 68. s. 18.] shall make complaint on oath to any neighbouring justice, he shall by warrant cause such master to be brought before him to be examined; and if it shall appear that the same is not lost or mislaid, but wilfully and maliciously detained by such master, he shall, on conviction, pay 100l.; and if not paid within *two* days after conviction, he shall be committed to gaol for not less than *six*, nor more than *twelve* months, at the discretion of such justice. 25 G. 3. c. 68. s. 18.

And such justice may and is required, by warrant, to cause search to be made for such certificate, and if found, he shall cause the same to be delivered to the owner; and if not found, he shall certify the said detainer, refusal, and conviction to the person who granted such certificate, who shall, on the terms and conditions of the said acts being complied with, make registry of such vessel *de novo*, and grant a certificate thereof, notifying on the back of such certificate the ground upon which the vessel was so registered *de novo*. 28 G. 3. c. 34. s. 14. 34 G. 3. c. 68. s. 19.

Regulations of 23 G. 3. c. 70. extended to officers of the customs.

And whereas by 23 G. 3. c. 70. divers regulations are made for the more effectual preventing vexatious suits against the officers of excise, and their assistants; the same shall extend also to the officers of the customs, and their assistants. 24 G. 3. c. 47. sess. 2. s. 35. (a)

II. *Of the excise in general.*

Head office, and commissioners.

One principal head office of excise shall be kept in *London*, or within ten miles thereof, to which all other offices in the kingdom shall be subordinate and accountable; which said office shall be managed by such commissioners as the king shall appoint. 12 C. 2. c. 24. s. 46. 5 W. c. 20. s. 16.

Subcommissioners, and other officers.

And all the places within the bills of mortality shall be under the immediate care and management of the said head office; and such and so many subordinate commissioners, and subcommissioners, and other officers shall be appointed by the king in other places, as he shall think fit. 12 C. 2. c. 24. s. 48.

(a) See this act more at large under the following head: *Of the Excise in general*,

And

Office when to be kept open.

And the excise office, in all places where it shall be appointed, shall be kept open from eight in the morning, till two in the afternoon. 23 *G.* 2. *c.* 26. *s.* 12.

Office in market towns.

And the commissioners or subcommissioners shall appoint under their hands and seals, such persons as they shall think needful in each market town, to be there upon every market day, in some known and public place, for receiving entries and duties, and performing all other things touching the revenue of excise: And if such office shall not be so kept in each market town, the commissioners or others neglecting or refusing, shall for every market day forfeit 10*l.* And such person as shall come to such market town to make his entry or payment, and tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty for such weekly or monthly entries or payments, as should have been made or paid on such market day. 15 *C.* 2. *c.* 11. *s.* 10.

Collections, districts, and other divisions.

The kingdom of *England* and *Wales* (exclusive of the bills of mortality) is divided into about 50 *collections*; some called by names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties: Every collection is subdivided into *districts*, within each of which there is a *supervisor*; and each district is parcelled into *out-rides* and *foot walks*, within each of which there is a *gager* or surveying officer. *Gilb. Exch.* Append.

Gagers.

The commissioners or subcommissioners, in their respective circuits and divisions, shall constitute under their hands and seals, such and so many gagers as they shall find needful. 12 *C.* 2. *c.* 24. *s.* 33.

In order to which, he who would be made a gager must procure a certificate, that he is above 21, and under 30 years of age; that he understands the four first rules of arithmetick; that he is of the communion of the church of *England*; how he has been employed, or what business he hath followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has, for if he has above two, he cannot (by the rules of the office) be admitted. *Gilb. Exch.* Append.

He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient ability; and that the said certificate is of his own hand writing: Such certificate, written by him, must be signed by

by the ſupervisor of exciſe where the party applying lives. *Gilb. Exch.* Append.

At the bottom of the certificate muſt be his affidavit, that neither he, nor any elſe to his knowledge, hath, directly or indirectly, given or promiſed to give any treat, fee, gratuity, or reward, for his obtaining or endeavouring to obtain an order for his being inſtructed. *Id.*

When an order for inſtruction is granted, it is directed to an experienced officer, who receives ſuch perſon as his pupil; and the like books as officers have being delivered to ſuch pupil, he goes with and attends the officer, who inſtructs him, and take ſurveys, and in his own books makes the like entries as if he was an officer, until the inſtructor certifies that he is fully inſtructed. *Id.*

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens. *Id.*

Officer's oath.

No perſon ſhall be capable of intermeddling with any office relating to the exciſe, until he ſhall, before two juſtices in the county where his employment ſhall be, or before a baron of the exchequer, take the oaths of allegiance and ſupremacy, together with this oath following:

You ſhall ſwear to execute the office of —— truly and faithfully, without favour or affection, and ſhall from time to time true account make and deliver to ſuch perſon or perſons as his majeſty ſhall appoint to receive the ſame, and ſhall take no fee or reward for the execution of the ſaid office, from any other perſon than from his majeſty, or thoſe whom his majeſty ſhall appoint in that behalf. 12 C. 2. c. 24. ſ. 47.

And the juſtices ſhall certify the taking of ſuch oath to the next quarter ſeſſions, there to be recorded. *ſ.* 48.

And the officer ſhall alſo enter a certificate thereof with the auditor of the exciſe: And if any ſuch perſon ſhall act before he hath taken the ſaid oaths, and entered his certificate with the auditor aforeſaid, he ſhall forfeit 50l. a month. 15 *C.* 2. *c.* 11. *ſ.* 27.

And he ſhall alſo, within ſix months after his admiſſion to the office, take the oaths and ſubſcribe the declaration againſt tranſubſtantiation, at the quarter ſeſſions; in like manner as other perſons admitted to offices.

Officers general duty.

The buſineſs of the *ſupervisor* is to be continually ſurveying the houſes and places of the perſons within his diſtrict liable to duties; and to obſerve and ſee whether the officers duly make their ſurveys, and make due entries thereof in their books and in their ſpecimen papers; and every ſupervisor is in his own book to enter what himſelf

does,

does, each day and part thereof; and alſo ſet down the behaviour, good or bad, the diligence or negligence, of the ſeveral officers of his diſtrict; and at the end of every ſix weeks to draw out a diary of every day's buſineſs, and of the remarks made each day of the ſeveral officers in his diſtrict, and to tranſmit ſuch diary at the end of every ſix weeks to the chief office. *Gilb. Exch.* Append.

Each commiſſioner takes and peruſes a proportion of theſe diaries, and when he meets with any remarkable complaint againſt any officer, he communicates it to the reſt; who thereupon come to an agreement, either to *admoniſh*, *reprimand*, *reduce*, or *diſcharge*. For ſmall faults, officers are admoniſhed; for great ones, reprimanded; for greater, reduced; but for the greateſt, they are diſcharged. The commiſſioner, who peruſes the diary, writes in the margin, admoniſh, reprimand, or as the caſe is. *Id.*

Theſe diaries, after having been thus written upon, are delivered to the clerk of the diaries, who in a book, called the reprimand book, places the admonitions, reprimands, and the like, to each officer's account, and writes every offender word thereof. Which reprimand book is reſorted to, upon diſcovering new faults; and if it is there found, that the officer has before been admoniſhed and reprimanded ſo often, that there are no hopes of his amending, he is then diſcharged. The ſaid book is likewiſe reſorted to, when application is made for advancing or preferring an officer into a better poſt. Frequent admonitions or reprimands are a bar to preferment, unleſs they are of old ſtanding; but if for three years laſt he ſtands pretty clear of admonitions and reprimands, thoſe of elder date are not much regarded. *Id.*

The *collector*'s buſineſs is, every ſix weeks to go his rounds; and in the intervals of rounds, he is to be aſſiſting in proſecuting offenders before the juſtices; he is alſo to peruſe the ſuperviſor's diaries, and where he finds an officer complained of, is to examine him and the ſuperviſor, and having heard both, is in the margin to write his opinion of each fact; he is alſo to have an eye how the ſuperviſors and officers of his collection perform their duties; and from the vouchers he tranſcribes into his book the charge on each particular perſon in his collection. *Id.*

For faults, gagers are *reduced*, either to be only aſſiſtants, or from foot walks to out-rides; ſuperviſors are reduced to be again only gagers; and collectors are reduced to be ſuperviſors. *Id.*

In

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged, are never again restored, unless one of the discharges appears to have been occasioned by a misrepresentation of the case. *Gilb. Exch.* Append.

Penalties by the excise laws.

In the act of the 24 G. 2. c. 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this: All *fines, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means, as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at* Westminster, *and shall be half to the king, and half to him that shall inform or sue.* s. 29.

By two justices.

That is to say, *If it is within the limits of the chief office in* London, *the offences shall be determined by the commissioners (or any three of them,* 1 G. 2. st. 2 c. 16. s. 4, 5.) *or, in case of appeals, by the commissioners of appeals; in all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in case of neglect or refusal of such justices by the space of* 14 *days next after complaint made, and notice thereof given to the offender; then the subcommissioners may hear and determine the same: And if the party find himself aggrieved by the judgment given by the said subcommissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace, and subcommissioners aforesaid, are required, upon any complaint or information* (F) *exhibited and brought of any such forfeiture made or offence committed, to summon* (G) *the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence* (H) *and to issue warrants* (I) *under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in* [*not less than* 4, *nor more than* 8 *days,* 27 G. 2. c. 20. s. 1.]; *and for want of sufficient distress, to imprison* (K) *the party offending till satisfaction be made.* 12 C. 2. c. 24. s. 45.

Not necessary to be the two next justices.

Residing near] Where the *next* justices are impowered to proceed in any matter, they and no other ought in such

ſuch caſe to act; but where it is only directed, that the juſtices reſiding *near* ſhall do ſuch a thing, thoſe words are not reſtrictive, but only directory, and any juſtices, although not the *next* juſtices, may proceed therein. *Shaw.* Exc.

But where the act ſays, that *any two juſtices reſiding near* to the place where the forfeiture ſhall be made, or the offence committed, ſhall hear and determine the matter, it doth not intend that the juſtices of a county at large dwelling near to a town corporate, which hath juſtices of its own, and an excluſive charter, ſhall have power to intermeddle with regard to offences committed within ſuch town corporate; but only to veſt the juriſdiction in juſtices of counties, cities, and places, with reſpect to their local juriſdictions within ſuch places. *T.* 14 *G.* 2. *Talbot* and *Hubble*, Str. 1154.

Information. *Upon any complaint or information exhibited*] By theſe words it is not neceſſary that the information be exhibited *in writing*; but if it is a verbal information, the juſtices ought to make a record thereof, and of the time and place, when and where exhibited, which muſt be expreſſed in the preſent, and not in the time paſt: But to ſave the juſtices that trouble, it is uſual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying ſuch information, leaving therein blanks for the names of the juſtices, and the day and month and year and place when and where laid; and when thoſe blanks are filled up by direction or conſent of the juſtices then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the proſecution was in the proper county; and therefore though it may happen, that for laying the information, the proſecutor may be obliged to attend one juſtice in one town, and another juſtice in another town, it muſt not be mentioned, that the information was laid at both towns, for that would be abſurd; but in ſuch caſes it is uſual to expreſs that the information is laid at the town where the hearing is intended to be. *Shaw.* Exc.

Summons. *Summon the party accuſed*] A ſummons left at the houſe or uſual place of reſidence, or with the wife, child or menial ſervant of the perſon accuſed, ſhall be as effectual as if delivered to the perſon himſelf. 32 *G.* 2. *c.* 17. *ſ.* 1.

And in all caſes relating to the exciſe, or to any of the duties under the management of the commiſſioners of exciſe (except where particular proviſions are made for ſummoning

moning offenders, or for condemning of seizures made from persons unknown); the leaving such summons at the house, work-house, shop, cellar, vault, or usual place of residence of such person, directed to him by his right or assumed name, shall be as effectual as if delivered to him in person, and as if directed to him by his proper name. *s.* 2.

Proceed to the examination of the fact] And by the 9 *G.* 2. *c.* 35. it is enacted, that in trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *s.* 34. Justices to proceed on the merits.

Give judgment] Although it hath been said, that whatever is recorded by the justices of their order ought to be expressed in words of the present time and tense; yet that doth not make it necessary, nor is it indeed practicable, that all that is to be so entered should actually be entered at the instant of time when such judgment is given; for such entering the whole at that time would hinder the dispatch of business, and delay the hearing of causes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to such short minutes or notes as are then taken by such justices, it will be as authentick as if it had been entered at the instant of time in which such order was made, or judgment was given. *Shaw.* Exc. Judgment.

And to issue warrants under their hands] Although it is here only directed, that the warrant shall be under the *hands* of the justices; yet since it is generally implied in all warrants, that they are both under *hand* and *seal*, it is safe at least, if not necessary, that this warrant also, amongst the rest, be both *signed* and *sealed*. Warrant to distrain.

For levying the same on the goods and chattels of the offender] And in case where the offender shall remove out of the jurisdiction, it is enacted by the 18 *G.* 2. *c.* 26. *s.* 13 and 5 *G.* 3. *c.* 43. *s.* 26. that the commissioners and justices respectively, within whose jurisdiction any person charged by any act concerning the duties of excise, or any other duties under the management of the commissioners of excise, or who hath committed any offence against any of the said acts, shall be found, may summon, hear, adjudge, and determine, and issue any process or warrant, in the same manner as before they might have done in case of such offences committed within their jurisdiction; and if they shall, upon any judgment given by them, issue a warrant of distress, and the person authorized to execute the warrant shall make a return thereto that no sufficient distress can be found, it shall be lawful for the said commissioners and

and juſtices reſpectively, within whoſe juriſdiction the party ſhall at any time be found, againſt whom ſuch warrant ſhall have been iſſued, upon producing to them ſuch warrant, and return thereof, to commit ſuch offender to the next county gaol till ſatisfaction be made.

And to cauſe ſale to be made thereof if not redeemed in 14 *days*] But by the 27 *G.* 2. *c.* 20. the juſtices may not order the diſtreſs to be detained more than eight days, nor leſs than four.

Want of ſufficient diſtreſs.

For want of ſufficient diſtreſs] Mr. *Shaw* and Mr. *Barlow* are of opinion, that where there are ſome goods, but not ſufficient for ſatisfying the judgment, yet thoſe goods may be applied for that purpoſe ſo far as they ſhall extend, and the defendant ſhall be impriſoned for the reſidue; which may ſeem hard ſometimes, when the defendant ſhall perhaps ſatisfy nearly the whole ſum, and moreover be impriſoned as much as if he had paid nothing; and it hath been adjudged in other caſes, that a man ſhall not firſt pay part, and then be impriſoned for the reſidue, but ſhall either pay the whole or be impriſoned for the whole: But perhaps the diſtinction may be this; where there is a limited time of impriſonment, as for inſtance three months, there the defendant ſhall not pay part, and then be impriſoned the whole three months, which would be to puniſh him both ways; but where the impriſonment is till the penalty ſhall be paid, there the payment of the penalty is the thing chiefly regarded, and the impriſonment is not intended as a puniſhment, but as a mean to compel the payment of the penalty; and if part of it is paid already, the enlargement may come the ſooner, by payment of the reſidue.

Impriſonment.

Impriſon the party till ſatisfaction be made] But before any warrant can be made to arreſt and impriſon the perſon of the defendant, there muſt be firſt a warrant to ſeize the utenſils in cuſtody of ſuch offender, and the offender's goods; and that warrant muſt be returned: All which muſt be done, before any warrant can be regularly made to arreſt and impriſon the defendant's perſon. Which method ought to be obſerved, though perhaps it may be well known by, or ſufficiently proved before the juſtices, that all the utenſils and all the defendant's goods are carried off; for the law being in all caſes very tender of depriving men of their liberty, it is neceſſary that all poſſible means ſhould be uſed to levy the money on ſuch goods, before the perſon of the defendant be impriſoned. But if a warrant to ſeize the utenſils and the goods be made and delivered to

an officer to be executed, and if such officer, having made diligent search, cannot find any such, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of such warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justification. *Shaw.* Exc.

All excisable goods are liable to be seized for arrears of duty, or penalties, wherever found.

And by 28 *G.* 3. *c.* 37. All goods in respect whereof any duty of excise is imposed, and all materials, preparations, utensils, and vessels in the custody of the maker or manufacturer thereof, or person to his use, or in trust for him, shall be liable to, and chargeable with, all duties in arrear in respect of any such goods; and shall also be subject to all fines, penalties, and forfeitures incurred by such maker, for any offence against any act of parliament relating to the duties on such or the like goods; and it shall be lawful in all such cases to levy such fines, duties, and penalties, and use such proceedings as may lawfully be done in relation to such goods, in case the debtor or offender were the lawful owner. *s.* 21.

Or person for his use, or in trust for him] In the case of *Austin* and another, assignees of *Dormer* a bankrupt, *v. Whitehead* and others, it was determined, that if a soapmaker having incurred a forfeiture for concealing soap contrary to 1 *G. c.* 36. *s.* 2. become bankrupt, and a provisional assignment of his estate be made, after which the soap is condemned and the bankrupt convicted, and thereupon a warrant issues to levy the penalty *on his goods generally*, such a warrant is bad, and cannot justify a seizure of the soap in the hands of the assignees. And L. *Kenyon* Chief Justice said *(inter alia)*, that even if no bankruptcy had intervened in this case, this warrant could not have been supported, because it directs a seizure of the goods of *Dormer* generally, whereas the excise laws only give a lien on those goods that are liable to the duties, and the materials and utensils for making the same. *Durnf.* and *East.* 6 V. 436.

Offenders removing out of the jurisdiction where they were convicted.

By 32 *G.* 3. *c.* 10. Where any person against whom any warrant of commitment in execution, commonly called a *body warrant*, shall be issued, shall escape, go into, reside, or be in any other county, riding, division, city, liberty, town, or place, out of the jurisdiction of the commissioners or justices granting such warrant; any three commissioners, or a justice of the peace where such person shall so be, on proof being made on oath of the hand-writing of such

commissioners or justices granting such warrant, may indorse the same, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute the same within such jurisdiction, and to convey such offender before the commissioners or justice who indorsed the same, or some other justice of the county or place where such warrant was indorsed; who may, by indorsement upon such warrant, commit such offender to the common gaol or house of correction of the county or place where such warrant shall be executed, according to the exigency of such warrant, there to remain until delivered by due course of law. *s.* 1.

And no action shall be brought against any person who shall indorse such warrant by reason thereof; but any person may bring his action against the commissioners or justice who originally granted such warrant, in the same manner as if this act had not been made. *s.* 2.

Summoning witnesses.

By the 7 & 8 *W.* *c.* 30. The commissioners and justices may summon witnesses (L) to appear before them at a certain day, time, and place, to be inserted in such summons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance any shall refuse to give evidence, he shall forfeit 10*l.* *s.* 24.

Officer on trial need not produce his commission.

If upon trial any question shall arise, concerning the keeping of any office of excise, or concerning any person's being an officer; proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving or producing the commission. 6 *G.* *c.* 21. *s.* 24. 11 *G.* *c.* 30. *s.* 32.

Proof to lie on the owner.

By 6 *G.* *c.* 21. *s.* 41. and 12 *G.* *c.* 28. *s.* 8. If on trial any dispute shall arise, whether the excise or other inland duties shall have been paid for any foreign goods seized; the proof shall lie on the owner, and not on the officer. And by the 23 *G.* 3. *c.* 70. *s.* 35. If any goods liable to duties of excise or inland duties shall be seized, or if any action shall be brought by the owner or claimer of any such goods against any officer of excise or his assistant; proof of payment of the duties shall lie upon the owner or claimer, and not on the person who seized the same, or against whom the action shall be brought.

E. 12 *G.* 3. *Salamon* and *Gordon.* Trespass for taking four boxes of plate glass; and, on Not Guilty pleaded, the cause came on to trial at *Guildhall* before *Blackstone* J. at the sittings after Hilary term. It appeared in

evidence, that the goods were ſeized in the open ſtreets of *London*, from the plaintiff's porter, who was carrying them from a warehouſe, where they had laid three months, unto the plaintiff's houſe, in the paſſage to which they did not go near the water ſide: That the defendants were cuſtom-houſe officers, and ſeized the goods about nine of the clock in the evening, under a ſuſpicion of their not having paid the duties. The defendants admitted theſe facts; but inſiſted, that under the ſtatutes the *onus probandi* that theſe goods had paid duty lay upon the plaintiff; in default of which, the ſeizure was juſtifiable. The judge was of a different opinion, and thought the defendant, in an action of treſpaſs, muſt ſhew the goods were forfeited: And the plaintiff recovered a verdict. It was moved for a new trial, and urged, that the proviſions in the ſtatutes extended to all caſes, as well actions as proſecutions. On the other hand, it was inſiſted, that they related, not to actions of treſpaſs, but only to proſecutions in the exchequer. And of that opinion was the court. If it were otherwiſe, a cuſtom-houſe officer might enter into any man's houſe (within the year allowed in ſuch caſes), and ſeize any foreign goods, books, ſilks, laces, or any thing liable to the cuſtoms, and put the owner upon proof, that the duties have been paid. And the rule for a new trial was diſcharged. *Black. Rep.* 813.

M. 18 *G.* 3. *Henſhaw* and *Pleaſance*. An action of treſpaſs was brought againſt certain officers of exciſe, for ſeizing a quantity of ſoap, ſuppoſed to be irregularly lodged and concealed. Which came to be tried before *Blackſtone* J. at the ſittings in *London* during the laſt Trinity term. It appeared in evidence, that a warrant, grounded on an oath of ſuſpicion, was granted to the defendants by the commiſſioners of exciſe, on the 25th of *February* 1777, to ſeize the ſaid ſoap: That on the 26th, upon the return of the ſeizure, an information was ordered by the commiſſioners againſt the plaintiff: That on the 28th, *Henſhaw* brought his action, and ſued out proceſs againſt the defendants; delivered declaration on the 19th of *April*; and, upon the plea of Not Guilty, gave notice of trial on the 25th of *April*, for the ſittings after that term, being the 14th of *May*. On the 10th of *May*, and not ſooner, notice was given to *Henſhaw* of the information, with a ſummons to attend the hearing before the commiſſioners on the 13th, when the commiſſioners wiſhed to poſtpone giving any opinion till they had conſidered of the evidence; but the ſolicitor of exciſe preſſed

to have it determined immediately, in order, as he expreſſed it, to get ſtart of the action which was to be tried on the morrow: which drove the plaintiff into a conſent to poſtpone the trial of his cauſe. And on the 16th, the commiſſioners convicted the plaintiff in the penalty of 100l. (which they mitigated to 40s.) beſides the forfeiture of the ſoap. And it was inſiſted on the trial of the cauſe, on the 10th of *June* following, firſt, that this condemnation was concluſive evidence to the jury; and ſecondly, if it was not ſo, yet that the *onus probandi*, that the ſoap had paid the duty, lay on the plaintiff. The judge permitted the condemnation, which was founded principally on the evidence of the defendants (together with others), to be read in evidence as a fact, but left it under all its circumſtances to the jury, to conſider what weight it ought to have; informing them, that this being a condemnation at the board of exciſe, and not in the exchequer, was not concluſive evidence; and that in an action of treſpaſs, the *onus probandi* of the ſoap's not having paid the duty lay upon the officers who ſeized it. Upon which the jury found a verdict for the plaintiff. It was moved for a new trial, upon this ſuppoſed miſdirection of the judge. But by *De Grey* Ch. J. and the other two juſtices: The judge's direction was right. It was determined lately in the caſe of *Scot* and *Shearman*, and has been uniformly ſo held for above a century, that a condemnation of goods in the exchequer is concluſive evidence againſt all the world. But the reaſons and authorities relied on in that and all the other caſes extend only to that court, being the king's ſupreme court of revenue, and not to the inferior juriſdictions of the boards of exciſe and cuſtoms. As to the other point, it was expreſsly determined in the above caſe of *Salamon* and *Gordon*, and we have no reaſon to alter the opinion then given. And the rule for a new trial was diſcharged. *Black. Rep.* 1174.

Sworn valuers. One or more juſtices ſhall have power to adminiſter an oath to any perſon ſkilled in the value of goods, veſſels, or carriages, mentioned to have been ſeized in any information exhibited before the juſtices, to view the ſame, and make return of the ſpecies, quantity, and value; and after condemnation, the ſaid goods ſhall be ſold where the commiſſioners ſhall think proper. 12 *G. c* 28. *ſ.* 16.

Mitigation. *The juſtices, commiſſioners, or ſubcommiſſioners, reſpectively, where they ſhall ſee cauſe, may mitigate, compound, or leſſen the forfeiture, penalty, or fine; ſo as the ſame be not made leſs than double the value of the duty of exciſe which ought to have*

been

been paid, beſides the reaſonable coſts and charges of ſuch officers, or others as were employed therein, to be to them allowed by the ſaid juſtices. 12 C. 2. c. 24. ſ. 46.

Mitigate] But it is not neceſſary in the mitigation, to mention or diſtinguiſh ſo much for the offence, and ſo much for the charges; but after the juſtices have agreed what ſums to allow for the charges, the beſt way will be to add thoſe two ſums together, and make their mitigation to ſuch ſum as both when added together do amount unto: as ſuppoſe the juſtices do intend, that the defendant ſhall pay 10l. for the offence, and 40s. for the charges, the beſt way will be to make their mitigation to 12l. without particularly mentioning that 10l. thereof is for the offence; and that the 40s. is for the charges; for in all caſes it is wrong to inſert in judgments more words or particulars than are neceſſary; and it is more particularly wrong in theſe caſes, becauſe the mentioning ſuch unneceſſary particulars may give a handle for cavils and diſputes. *Shaw.* Exc.

Appeal.

There is no appeal directed in the ſaid ſtatute of 12 *C.* 2. from judgments given by the juſtices of the peace; for whereas it is enacted, in the ſaid ſtatute, that *if the party find himſelf aggrieved by the judgment given by the ſubcommiſſioners, he may appeal to the next quarter ſeſſions*, theſe words, not being general, or ſuch as may be applied equally, as well to the judgments given by the juſtices, as to judgments given by ſubcommiſſioners, they muſt be underſtood as limited and reſtrained to ſuch judgments only as are given by ſubcommiſſioners, in whom the parliament (it ſeems) did not ſo entirely confide as in the juſtices, but have made the aforementioned diſtinction between the judgment of the one and of the other; which muſt be obſerved and purſued; and therefore, generally, there lies no appeal to the quarter ſeſſions from the judgment given by the juſtices, in matters relating to the exciſe. *Shaw.* Exc.

In the caſe of *K.* v. *Juſtices of Surry*, *E.* 28 *G.* 3. it was determined, That no appeal lies to the ſeſſions, from a conviction by two juſtices, for an offence under 25 *G.* 3. *c.* 72. *ſ.* 9. for printing cotton before it was meaſured and marked by the proper officer of exciſe, according to the directions of the act; notwithſtanding the act contains a general clauſe of reference to all former exciſe laws, and incorporates all the powers and proviſions of 12 *C.* 2.

c. 24. and of all other laws relating to the excise or inland duties under the management of the commissioners of excise; for the managing, mitigating, and adjudging the duties or penalties granted by this act. *Durnf.* and *East.* 2 V. 504.

Nevertheless in some particular instances, such power is given by subsequent statutes; which will be mentioned under the special heads in this title hereafter following.

By the 15 *C.* 2. *c.* 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or subcommissioners, and given security to the commissioners of appeal, or justices of the peace, where the cause is to be finally adjudged, for such forfeiture as was adjudged against him; and if upon appeal the judgment be reversed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal, and the party originally prosecuting shall pay double costs; but if the judgment be affirmed the party appealing shall pay the like costs to the commissioners. *s.* 19.

And by the same statute, all differences and appeals about the excise, shall be heard in the proper county, and not elsewhere. *s.* 22.

And appeals within *London*, and the limits thereof, shall be within two months after judgment, and notice given or left at the dwelling house of the party; in all other places, in four months, and not otherwise. *s.* 26.

Actions brought against the officers.

For preventing vexatious suits against the officers of excise and their assistants; if any information or suit be commenced and brought to trial, on account of the seizure of any goods, or of any vessel, boat, horse, or other cattle, cart, or carriage, wherein a verdict shall be found for the claimer thereof, and it shall appear to the judge that there was a probable cause of seizure, he shall certify the same upon the record; and in such case the claimant shall not be entitled to any costs of suit, nor shall the person who seized the same be liable to any action, indictment, or other suit or prosecution on account of such seizure; and if any action, indictment, or prosecution shall be commenced and brought to trial against any person on account of such seizure, wherein a verdict shall be given against the defendant, and the judge shall certify on the record that there was a probable cause of seizure, the plaintiff, besides the thing so seized or the value thereof, shall not

be

be entitled to above 2d. damages, nor to any coſts of ſuit, nor ſhall the defendant be fined above 1s. 23 *G.* 3. *c.* 70. *ſ.* 29.

And no writ ſhall be ſued out againſt, nor a copy of any proceſs ſerved upon any officer of exciſe or his aſſiſtant, for any thing done in the execution of his office, until one calendar month's notice in writing ſhall have been delivered to him, or left at his uſual place of abode, by the attorney or agent for the party who intends to bring the action; in which notice ſhall be clearly and explicitly contained the cauſe of action, the name and place of abode of the perſon who is to bring ſuch action, and the name and place of abode of the ſaid attorney or agent: and a fee of 20s. and no more ſhall be paid for the preparing and ſerving ſuch notice. *ſ.* 30.

Until one calendar month's notice] In the caſe of *Caſtle* and another againſt *Burditt* and others, *E.* 30 *G.* 3. it was determined, that where the law requires a month's notice to be given of an action intended to be brought, the month begins with the day on which the notice is ſerved. *Durnf.* and *Eaſt.* 3 V. 623.

M. 33 *G.* 3. *Daniel* v. *Wilſon.* This was an action of treſpaſs for an aſſault committed by an exciſe officer; the queſtion was, whether he was entitled to a month's notice before the bringing of the action by the above act, 23 *G.* 3. *c.* 70. *ſ.* 30. No notice was given in this caſe, and it was contended that it was not neceſſary, the defendant, at the time of the aſſault, *not being in the execution of his office.* As to which it appeared that the defendant, juſt before the aſſault in queſtion, had been in purſuit of ſome ſmugglers, and had, after a violent ſtruggle with them, in which he had been ſeverely beaten, taken ſum run goods, but the ſmugglers themſelves had retired; in about five minutes after, the plaintiff, who had in truth no concern with the ſmugglers, or with any ſmuggled goods, paſſed by the defendant with ſomething upon his back, and being unknown to the defendant, and ſuſpected by him to be one of the gang of ſumugglers, was ordered to deliver what he was carrying; he anſwered, that he had nothing to deliver, being only a fiſherman; whereupon the defendant aſſaulted and ſtruck him. At the trial at *Hereford*, *Perryn* B. was of opinion that the caſe fell within the meaning of the ſtatute requiring notice, and for want of it nonſuited the plaintiff. *Leyceſter* moved to ſet aſide the nonſuit, on the ground that the aſſault could not be ſaid to have been com-

mitted in the execution of the defendant's office. But by the *court*, the act was clearly intended to protect such officers as, acting in the *bona fide* discharge of their duty, were inadvertently guilty of excesses beyond the strict line of their duty. Here an affray had just taken place with some smugglers, when the plaintiff passed by under circumstances of suspicion; he refused to stand search; and though the defendant's conduct thereupon was perhaps too hasty; yet it manifestly appears that he acted in the supposed execution of his office, however illegally; and that is sufficient to bring the case within the protection of the statute. Rule refused. *Durnf.* and *East.* 5 V. 1.

And the officer may, at any time within such month, tender amends to the party complaining, or to his agent or attorney; and if not accepted, he may plead such tender in bar of the action, together with the plea of Not Guilty, and any other plea with leave of the court: And, if upon issue joined, the jury shall find the tender to have been sufficient, they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuited, or discontinue his action, or judgment shall be given for the defendant upon demurrer, the defendant shall be entitled to the like costs as if he had pleaded the general issue only; and if the jury find that no amends or not sufficient were tendered, and also against the defendant on such other pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, with costs of suit. 23 *G.* 3. *c.* 70. *s.* 31.

And the plaintiff shall not be permitted to produce any evidence of the cause of action, except such as shall be contained in the notice. *s.* 32.

And if the officer shall neglect to tender amends, or shall have tendered insufficient, before the action brought, he may, by leave of the court, at any time before issue joined, pay into court such sum as he shall see fit. *s.* 33.

And if an action shall be brought against any officer of excise or his assistant, for any thing done in the execution of his office, it shall be brought within three months next after the cause of action shall arise, and not afterwards; and shall be laid in the proper county; and the defendant may plead the general issue, and give the special matter in evidence; and if the plaintiff shall be nonsuited, or discontinue, or if upon a verdict or demurrer judgment shall be given against him, the defendant shall recover treble costs. *s.* 34.

Offences relating to the excise made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, or forfeiture of lands. 19 G. 2. c. 34. s. 5.

Felonies relating to the excise where to be tried.

Any alehousekeeper harbouring an absconded person, against whom a process of arrest hath issued, for any offence against the laws of excise or of the customs, after six days notice of such absconding in two successive gazettes, and writing fixed on the door of the parish church where he last dwelt, shall forfeit 100 l. and have no licence for the future. 9 G. 2. c. 35. s. 30, 31.

Alehousekeepers harbouring offenders.

If any person shall conceal, or suffer to be concealed, any goods liable to the duties of excise, and inland duties; he shall (whether he claims any interest in them or not) forfeit the same, and treble value. 11 G. c. 30. s. 16.

Concealing exciseable goods.

And if any trader subject to the survey of any officer of excise, and who is required to keep just scales and weights, shall, before, or after, or in weighing his stock, put any other substance into the commodity so to be weighed, whereby such officer may be hindered or prevented from taking a just account thereof; or shall forcibly obstruct or hinder, or by any art, device, or contrivance, prevent or impede such officer in taking such account, he shall forfeit 100 l. 26 G. 3. c. 77. s. 8.

Using art to deceive officers in taking the weight of stock.

And all such traders, who shall, in weighing their stock, make use of any false, unjust, or insufficient scales or weights, to the intent to defraud his majesty of the duties, shall forfeit the same, which may be seized by any officer of excise. 28 G. 3. c. 37. s. 15.

False scales and weights may be seized.

The officers, in their permits for removing exciseable goods, shall express as well the time for which they shall be in force for removing such goods, as the time within which they shall be received into stock by the person to whom they are sent: and if not removed within the time limited (except in case of unavoidable accident); or, in default of such removing, if the permit shall not be returned to the officer who granted the same; the person procuring the permit shall forfeit treble value of the goods; and, if not received into stock within the time limited, by the person to whom they were permitted to be sent, they shall be deemed as goods removed without a permit. 21 G. 3. c. 55. s. 27, 28.

Permit for removing exciseable goods.

If on request made by any officer of excise, to a constable to go along with him, and to be present at the doing of any thing, at the doing whereof his presence shall be necessary

Constable to be assisting.

neceſſary by any ſtatute, he ſhall neglect or refuſe or ſhall not go along with him, and be preſent at the doing thereof; he ſhall forfeit 20 l. 11 *G. c.* 30. *ſ.* 31.

Obſtructing officer.

If any perſon ſhall oppoſe, moleſt, hinder, or obſtruct any officer of exciſe, in the due execution of the powers given him by any act relating to the duties of exciſe; he ſhall forfeit 10 l. 6 *G.* 21. *ſ.* 7.

And actions of aſſault upon any officer of exciſe may be tried in any county. 9 *G.* 2. *c.* 35. *ſ.* 26.

And further penalties are impoſed by many acts, for aſſaulting, reſiſting, oppoſing, moleſting, obſtructing or hindering officers of exciſe in the due execution of their duty, which are inſerted under their reſpective heads.

Officer not to be a dealer.

If any officer of the exciſe or cuſtoms ſhall deal in coffee, tea, brandy, or other exciſeable liquors; he ſhall be incapable to hold any office in the revenue, and forfeit 50 l. 12 *G. c.* 28. *ſ.* 7.

Officer taking a bribe.

No ſworn gager, or other officer, ſhall take any bribe, for any matter relating to the exciſe; on pain of 10 l. 15 *G.* 2. *c.* 11. *ſ.* 16.

And a further penalty upon ſuch officer is inflicted in divers inſtances hereafter mentioned.

And by the 11 *G. c.* 30. If any perſon liable to the duties of exciſe, or any other duties under the management of the commiſſioners of exciſe, ſhall give or offer to any officer of the ſaid duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it, he ſhall forfeit 500 l. *ſ.* 40.

Officer meddling in elections.

No collector, ſupervisor, gager, or other perſon concerned in charging, collecting, levying, or managing the duties of exciſe, or any part thereof, ſhall by word, meſſage, or writing, or in any other manner, endeavour to perſuade any elector to give, or diſſuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100 l. half to the poor, and half to him who ſhall ſue in the courts at *Weſtminſter*; and moreover he ſhall be incapable to hold any office of truſt under the king. 5 *W. c.* 20. *ſ.* 48.

III. Of the ſeveral particulars under the management of the commiſſioners of the cuſtoms and exciſe.

By 27 *G.* 3. *c.* 13. after 10th *May* 1787, all duties, allowances, bounties, and drawbacks of exciſe, or other duties under the management of the commiſſioners of exciſe, granted by any act or acts of parliament then in force; and alſo the additional impoſts or duties charged upon the product and amount of the ſaid duties, ſhall ceaſe. Except in recovering arrears and penalties then incurred: And alſo except the duties upon *Malt*, *Mum*, *Cyder*, and *Perry*, granted by 26 & 27 *G.* 3. And the duties payable for *Licences* granted by the exciſe officers. *ſ.* 35.

All exciſe duties repealed.

Exceptions.

And in lieu thereof, there ſhall be raiſed, levied, collected, and paid, upon the ſeveral goods, wares, and merchandize, and commodities mentioned and deſcribed in the ſchedule (F) annexed to the ſaid act, the ſeveral duties of exciſe ſet forth in the ſaid ſchedule, and the ſeveral allowances, bounties, and drawbacks of exciſe ſhall be made and allowed as deſcribed therein: And alſo all other ſuch ſpecial allowances, as are particularly directed by any act or acts of parliament then in force. *ſ.* 36.

New duties.

And the ſaid new duties ſhall be raiſed, levied, collected, anſwered, paid, recovered, adjudged, mitigated, and allowed, (except where altered by this act,) in the like manner, and by ſuch means, ways, and methods as the former duties. And all conditions, regulations, rules, reſtrictions, and forfeitures; and every pain, penalty, fine, or forfeiture of any nature or kind whatſoever, for any offence againſt any act of parliament then in force; and the ſeveral clauſes, powers, and directions therein contained, (unleſs altered hereby,) ſhall extend to and be applied in the execution of this act, in as full and ample manner as if the ſame were repeated and re-enacted in the body of this act. *ſ.* 38.

New duties to be recovered in the ſame manner as the old.

And in all caſes where duties are impoſed or drawbacks allowed by this act on any ſpecifick quantity of goods, the ſame ſhall apply after the ſame rate to any leſs quantity. *ſ.* 39.

It is proposed to arrange the matters relating to the excise under the following heads: *viz.*

I. *Ale, beer, cyder, perry, mum, metheglin, and mead.*
II. *Things sold by auction.*
III. *Bricks and tiles.*
IV. *Candles.*
V. *Coaches and coachmakers.*
VI. *Coffee, tea, chocolate, and cocoa nuts.*
VII. *Glass.*
VIII. *Hops.*
IX. *Leather.*
X. *Linen cloth, silks, cottons, and callicoes.*
XI. *Malt.*
XII. *Paper.*
XIII. *Plate.*
XIV. *Salt.*
XV. *Soap.*
XVI. *Spirituous liquors.*
XVII. *Starch, hair powder, and stone blue.*
XVIII. *Sweets.*
XIX. *Tobacco and snuff.*
XX. *Vinegar and verjuice.*
XXI. *Wine.*
XXII. *Wire.*

I. Ale, beer, cyder, perry, mum, metheglin and mead.

Licence for brewing strong beer.

Every *common brewer of strong beer* shall take out a licence from the officers of excise, for which he shall pay if the quantity of beer brewed by him shall not exceed within the year ending 5th *July*, in each year, previous to taking out the licence, 1000 barrels, 1 l. 10s.

			l.	s.	d.
If 1000 barrels and under	2000	-	2	0	0
2000 - -	5000	-	5	0	0
5000 -	7500	-	7	10	0
7500 -	10,000	-	10	0	0
10,000 -	20,000	-	20	0	0
20,000 -	30,000	-	30	0	0
30,000 -	40,000	-	40	0	0
40,000 or above	-	-	50	0	0

And

And every perſon who ſhall, after 5th *July* 1784, firſt become a common brewer of ſtrong beer, ſhall previouſly take out a licence as aforeſaid, and at the end of every year ſhall pay ſuch further additional duty for ſuch licence according to the number of barrels ſo brewed by him within the preceding year. And if he ſhall neglect to take out ſuch licence, and renew the ſame annually, ten days at leaſt before the end of the year, he ſhall forfeit 50l. 24 *G.* 3. *c.* 41. *ſeſſ.* 2. *ſ.* 1, 2. 7.

To be renewed annually.

And *every common brewer of ſmall or table beer*, not being a common brewer of ſtrong beer, ſhall take out a licence, and pay for the ſame yearly 1l. which licence ſhall be renewed annually in like manner, on the penalty of 10l. *Id. ſ.* 1. 7.

Licence for brewing ſmall beer.

Every maker of *mead* for ſale, ſhall take out a licence, for which he ſhall pay 1l. and ſhall renew the ſame annually in like manner, on pain of 10l. *Id.*

Licence for making mead.

But perſons in partnerſhip need only take out one licence for one houſe. *Id. ſ.* 8.

Perſons in partnerſhip.

And by the 27 *G.* 3 *c.* 13. *ſchedule* (F). For every barrel of *beer* or *ale* above 6s. a barrel (excluſive of the duty hereby impoſed, and not being *twopenny ale* mentioned in the 7th article of the union, nor *table beer* brewed by common brewers according to the rules provided by 22 *G.* 3.) which ſhall be brewed by any common brewer, or perſon who ſhall ſell or tap out beer or ale publickly or privately, ſhall be paid by the brewer - - - - l. s. d. 0 8 0

Duty on beer and ale.

And for every barrel of *beer* or *ale* of 6s. the barrel or under (excluſive of the duty) brewed as aforeſaid - - - - 0 1 4

And for every barrel of *beer* or *ale* above 6s. the barrel (excluſive of the duty) and not exceeding 13s. 33 *G.* 3. *c.* 23. *ſ.* 1. commonly called *table beer*, brewed by common brewers according to the ſaid act 22 *G.* 3. ſhall be paid by the brewer - - - 0 3 0

And for every barrel of *two-penny ale* deſcribed in the 7th article of the union, ſhall be paid by the brewer or victualler - - - 0 3 $4\frac{113}{118}$

For every barrel of *French beer*, *ale*, *or mum*, imported from *France*, ſhall be paid by the importer - - - - 0 8 0

For every barrel of *beer*, *ale*, *or mum*, (other than from *France*,) ſhall be paid by the importer - - - - - 0 17 3

For

Allowance to common brewers.

For every barrel of *beer* or *ale* above 6s. a barrel, (excluſive of the duty, except *table beer* as aforeſaid,) brewed by the common brewer or other perſon, who ſhall ſell or tap out beer or ale publickly or privately *within the bills*, ſhall be allowed - - - l. s. d. 0 1 4

For every barrel of *beer* or *ale* above 6s. a barrel (excluſive of the duty) not being *two-penny ale* mentioned in the 7th article of the union, nor *table beer* as aforeſaid, brewed elſewhere - - - 0 1 8

And for every barrel of *beer* or *ale* of 6s. the barrel or under (excluſive of the duty) brewed as aforeſaid - - 0 0 4

For the duties payable on exportation and importation, ſee the ſchedule annexed to the act. And 38 *G.* 3. *c.* 54. *ſ.* 4.

Duty on cyder and perry.

And by the ſaid act 27 *G.* 3. *c.* 13. For every hogſhead of *cyder* or *perry* made and ſold by retail in *Great Britain* ſhall be paid by the retailer a duty of - - 0 14 7

And for every hogſhead of *cyder* or *perry* made and ſold in *Great Britain* in quantities of 20 gallons or upwards, by any dealer or retailer from fruit of his own growth, ſhall be paid by him - - - 0 6 11

And for every hogſhead of ſuch laſt mentioned *cyder* or *perry*, which ſhall be received into the cuſtody of any perſon to be ſold or diſpoſed of, ſhall be paid by ſuch perſon - 0 7 8

And for every hogſhead of *cyder* or *perry* made in *Great Britain*, and which ſhall be ſent or conſigned to any factor or agent who ſhall receive the ſame to ſell or diſpoſe of, ſhall be paid by ſuch factor or agent - 0 19 2

And for every ton of *cyder* or *perry* imported, ſhall be paid by the importer before landing - - - - 17 16 6

And by the annual malt act, 4s. more ſhall be paid for every hogſhead of *cyder* or *perry* made in *Great Britain*, and ſold by retail, to be paid by the firſt buyer, being a dealer or retailer.

But by 29 *G.* 3. *c.* 10. When it ſhall appear by a certificate under the hand of the proper officer, that the duty of 4s. hath been charged for ſuch *cyder* or *perry*, ſuch factor or agent ſhall, for every hogſhead, ſtand diſcharged

of

of 4s. part of the ſaid duty of 19s. 2d. and that cyder and perry ſhall not in any caſe be charged with any higher duty (including the ſaid duty of 4s.) than after the rate of 19s. 2d. *per* hogſhead. *ſ.* 22.

Duty on mum.

By 27 *G.* 3. *c.* 13. (ſchedule A) for every barrel containing 32 gallons of *mum imported*, there ſhall be paid a duty of - - l. s. d. 0 9 10

And a drawback of 7s. 10d. ſhall be allowed on the exportation thereof.

And moreover by the annual malt acts, for every barrel of *mum made* or *imported*, over and above all other duties, ſhall be paid by the maker or importer reſpectively - 0 10 0

Duty on metheglin or mead.

And by the ſaid act of 27 *G.* 3. For every gallon of *metheglin* or *mead* which ſhall be *made in Great Britain for ſale*, ſhall be paid by the maker - - - 0 1 0½

And alſo for every hogſhead containing 36 gallons *imported* ſhall be paid - - 0 8 10

And a drawback of 7s. 10d. ſhall be allowed on the exportation thereof.

Perſons taking cyder or perry into their poſſeſſions.

By 6 *G.* 3. *c.* 14. Every factor or agent, taking any *cyder* or *perry* into his poſſeſſion, ſhall, three days before he ſhall begin to diſpoſe of the ſame, make entry in writing, at the next office of exciſe, of his name, at the place where the cyder or perry is to be kept: And if he ſhall make uſe of any warehouſe or other place, without having made ſuch entry, he ſhall forfeit 50l. And every ſuch factor or agent ſhall be liable to all the regulations, which any dealer in or retailer of cyder and perry is liable to by this or any other act now in force, for managing the duties on cyder and perry. *ſ.* 9.

Dealers and retailers of cyder and perry.

And every perſon who ſhall buy any *cyder* or *perry*, or any fruit to make into cyder or perry, and ſhall ſell any cyder or perry ſo bought or made, by the hogſhead or any greater or leſſer meaſure; or ſhall ſell any cyder or perry in leſs quantity than 20 gallons at a time, whether the ſame be made from fruit of his own growth, or from bought fruit; ſhall be deemed a dealer in and retailer of cyder or perry. *ſ.* 11.

And every ſuch dealer in and retailer of *cyder* or *perry* made from fruit of his own growth, ſhall be liable to all the regulations which any dealer in or retailer of cyder or perry is liable to by this or any other act now in force for managing the duties on cyder or perry. *ſ.* 13.

Cyder not to be removed till the duties are charged.

And to prevent frauds being committed by dealers and retailers, or factors and agents, in ordering quantities to be

be removed immediately from the maker to the persons to whom they are consigned by such dealers and retailers, factors and agents, without coming into the possession of such dealers, retailers, factors, or agents, whereby the duties are prevented from being charged; it is enacted, that if any such dealer or retailer, factor or agent, shall cause such *cyder* or *perry* so to be removed from the maker to the person contracting for the same, without the duties having been first charged, and without a certificate from the office of excise (which he shall give without fee) signifying the quantity, or number of casks or other package, and that the duties have been charged, he shall forfeit 50l. *s.* 15.

Drawbacks allowed.

Provided always, that the said duties shall be drawn back on distillation into low wines and spirits: And if such *cyder* or *perry*, having paid the duties, shall afterwards, by being unfit for sale as cyder or perry, be charged with the duties on *vinegar*; three commissioners of excise, or two justices, on proof thereof, shall discharge the duties thereon imposed by this act. *s.* 16.

Places to be entered.

And every dealer in and retailer of *cyder* and *perry*, and other person receiving into his custody either of them for sale, and every person who shall buy any fruit to make into cyder or perry for sale, shall make entry of his storehouses, cellars, and other places, at the excise office within the district; on pain of 50l. 1 *G.* 3. *c.* 3. *s.* 21.

Notice and entry of places for brewing beer or ale.

By the 15 *C.* 2. *c.* 11. No common brewer, inn-keeper, victualler, or other retailer of beer or ale, shall without first giving notice at the next office of excise, or to the commissioners or subcommissioners, or one of them, erect, alter, or enlarge, any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts; on pain of 50l. And every other person, in whose occupation any house, outhouse, or other place shall be, where any such private tun, fat, back, cooler, or copper, shall be found, shall also forfeit 50l. And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited. *s.* 1.

No tun, batch, &c. to be altered without notice.

And by the 5 *G.* 3. *c.* 43. If any common brewer shall *alter* the position of any tun, batch, float, cooler, or copper, after the same hath been set up and fixed, without first giving notice thereof in writing to the officer; or shall place any boards, stone, wood, or any other materials at the dipping place; or shall by any other means prevent or hinder the gager from taking true dips and gages of beer, ale, or worts; he shall forfeit 20l. *s.* 25.

And the officer of excise in the day time, and in the presence of a constable, where he shall have just suspicion that any private back, tun, or other concealed vessel or receptacle are used by any brewer, maker, or retailer of excisable liquors, on request first made, and cause declared, may break open the door, or any part of his brewhouse, warehouse, or other room in his possession, and enter, and break up the ground in such house or room, or ground near adjoining in his possession, to search for such back, tun, or other vessel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other conveyance, he may search and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request, and with a constable, he may enter the same, and break open the ground, or any part of the house if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 20*l*. 7 & 8 *W*. *c*. 30. *s*. 27. Officer may enter and examine suspected places.

No common brewer shall keep any pipe or stop-cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing vessel to another, or into any other place, nor shall have any hole in any tun, batch, or float, by which any beer, ale, or worts may be conveyed into or out of the same; on pain of 100*l*. 8 & 9 *W*. *c*. 19. *s*. 4. Private pipes.

And the excise officer in the day time, and in presence of a constable, on request made, and cause declared, may break up the ground in any common brewhouse, or the ground near adjoining, or any wall, partition, or other place, to search for any such private pipe, or other conveyance, and on finding may follow the same, and break up the ground, house, wall, partition, or other place, through or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. *s*. 5.

And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall, or other place so broken up, or make satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 50*l*. *s*. 6

But any common brewer may use any pipes, stop-cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper

into his publick backs or coolers; and out of the same into his tuns, batches, or floats; or out of the tun into his cask. *s.* 7.

Private cellar.

No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying of any beer or ale, or worts, in cask, on pain of 50 l.; and every other person in whose occupation any such place shall be, shall also forfeit 50 l. 15 *C.* 2. *c.* 11. *s.* 1. 1 *W. st.* 1. *c.* 24. *s.* 11.

Private person suffering liquors to be brewed in his house.

If any person inhabiting in a market town, city, or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer or ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house or other place thereunto adjoining, other than for his own family, servants, labourers, or to others by way of charity, hospitality, or free gift; or shall lend out any of his brewing vessels, other than which are moveable and unfixt, he shall forfeit 50 l. 22 & 23 *C.* 2. *c.* 5. *s.* 10.

Gager to enter and take account.

The gager shall at all times, as well by night as by day, (and if by night, then in the presence of a constable,) be permitted upon his request to enter the brewhouse, and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, wort, perry, cyder, or metheglin; and to gage all coppers, fats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners, leaving a true copy of such return under his hand with such brewer, maker, or retailer; which return shall be a charge upon such brewers, makers, or retailers. 12 *C.* 2. *c.* 24. *s.* 33.

And if any such common brewer, maker, or retailer shall refuse to permit such gager to enter his brewhouse or other place aforesaid, or to gage or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gager to sell, carry out, or deliver to any of his customers, any beer, ale, or other the liquors aforesaid; and if he shall after such warning given, sell, carry, or deliver out the same, or any part thereof, not having paid the duty of excise, he shall, besides the forfeiture of double value, forfeit also the sum of 10 l. *s.* 33.

And by the 7 & 8 *W. c.* 30. If any common brewer, innkeeper, or victualler, shall, on request or demand made by the gager in the day time, or in the night in presence of a constable, refuse to permit him to come into his house,

houſe, brewhouſe, or other place uſed by him; or being entered, ſhall refuſe him to ſtay in the brewhouſe, whilſt his guile is brewing, and quietly gage and take an account of the ſeveral worts as they are brewed off, and let into his backs and tuns, and to ſee their ſtrong and ſmall drink cleanſed and carried out without mixture, and to take an account of the goods in the meſh tun, or the quantity of malt from which ſuch worts are made; he ſhall forfeit 20l. and the proſecutor ſhall not be obliged to prove that the party carried out any part of ſuch guile before he paid the duties. *ſ.* 22.

Offering or taking bribes.

And if any brewer ſhall bribe the gager to make a falſe return, he ſhall forfeit 10l.; and the officer taking the bribe ſhall alſo forfeit 10l. 15 *C.* 2. *c.* 11. *ſ.* 16.

Concealing cyder, metheglin, or mead.

And by the ſaid act, if any maker of *cyder*, *metheglin*, or *mead* for ſale, ſhall conceal any cyder, metheglin, or mead, from the view of the gager, he ſhall forfeit for every hogſhead of cyder 40s. and for every gallon of metheglin or mead 5s. *ſ.* 16.

And if any maker or retailer of the liquors aforeſaid, ſhall, on requeſt or demand made by the gager in the day time, or if by night in the preſence of a conſtable, refuſe to permit him to enter his houſe, ſtorehouſe, or other place uſed by him, and to take account of the ſaid liquors; he ſhall forfeit 15l. *ſ.* 17.

And by the 6 *G.* 3. *c.* 14. If any perſon ſhall obſtruct the exciſe officer in execution of the powers of that act, in relation to the duties on *cyder* and *perry*; he ſhall forfeit 40 l. *ſ.* 17.

Indifferent gagers may be ſworn.

As often as there ſhall be occaſion, two able artiſts ſhall be appointed, one of them by the commiſſioners or ſubcommiſſioners, and the other by the brewers of any city or place; who ſhall be ſworn before a juſtice, to take and compute the juſt contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing veſſels of that nature, and to deliver under their hands one copy of the contents to the commiſſioners and ſubcommiſſioners, and another to each reſpective brewer. 15 *C.* 2. *c.* 11. *ſ* 7.

Brewer to declare how much he intends to make.

Every common brewer who ſhall make any guile of beer or ale, ſhall declare to the gager, how much ſtrong beer or ale he intends to make of ſuch guile, and how much ſmall, before any part of the guile is cleanſed or removed out of his tuns; and if ſuch brewer or his ſervants ſhall refuſe to make ſuch declaration, the gager ſhall return the whole as ſtrong, and the brewer ſhall alſo forfeit

for very barrel in ſuch guile 20s. And if ſuch brewer or his ſervants, after ſuch declaration, ſhall make any increaſe of the ſtrong beer or ale, or if the gager ſhall find any beer, ale, or worts of the ſame guile laid off, over and above the quantity ſo declared; he ſhall forfeit for every barrel ſo increaſed, laid off, or found over and above ſuch quantity 5l. and the ſervant aſſiſting therein 20s. and in default of payment be impriſoned three months: And if on an information againſt the brewer for the ſaid penalties, it appear by his evidence, that the ſtrong beer or ale ſo declared, was increaſed by adding to or mixing with it any beer or ale that was left in the brewhouſe of a former guile, he ſhall nevertheleſs incur the penalties, except it be alſo proved upon oath that the ſtrong beer or ale ſo added to ſuch guile, was added in the ſight and view of the gager. 8 & 9 *W.* *c* 19. *ſ.* 2.

Mixing drink of a former brewing.

And whereas many brewers, having ſtrong beer or ale remaining in the brewhouſe from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the ſame new ſmall beer, or old returned drink, and then add the beer and ale ſo altered to the next guile; if it ſhall appear to the gager that the quality of ſuch ſtrong beer or ale ſo remaining in the brewhouſe of a former guile, and added to a guile of new drink, hath been ſo altered ſince it was brewed, he ſhall return all ſuch beer and ale ſo altered and added to a guile of new drink, as if the ſame were then originally brewed, and had never been charged before. *ſ.* 3.

Removing drink before the whole is brewed off.

If any common brewer, innkeeper, or victualler, ſhall cleanſe or remove out of his brewhouſe any part of his guile, or brewing of beer, ale, or worts, before the whole of ſuch guile is brewed off, and be in his tuns, backs, or coolers, and until the gager ſhall or might have taken an account of the ſame, without firſt giving notice to the ſuperviſor or gager at what time, and how much of ſuch guile or brewing he intends to cleanſe or remove, and where he intends to diſpoſe of the ſame; he ſhall for every barrel forfeit 40s. 7 & 8 *W.* *c.* 30. *ſ.* 21.

Gager may charge for worts miſſing.

Where it ſhall appear to the gager, that any worts are miſſing, or not fairly let down into the tun, and the gager cannot find the ſame, he may charge for ſo much beer or ale as ſuch worts ſo miſſing would reaſonably make. 1 *W.* *ſt.* 1. *c.* 24. *ſ.* 6.

Gage may be taken in warm worts.

Gagers may take their gages, and make their return and charges, upon warm worts in the backs, coolers, or other veſſels; and in ſuch caſe make allowance of one

tenth

tenth part thereof for waſh and waſte; which worts ſhall not be afterwards charged, when made into beer or ale. *ſ.* 7.

If any common brewer, innkeeper, victualler, or other retailer of beer or ale, ſhall after an account hath been taken by the gager, convert any ſmall beer or ſmall worts into ſtrong beer or ale, by mingling the ſame, and ſhall ſell, deliver out, or retail the ſame, without giving notice to the ſame gager, of the quantity ſo mingled and converted, or if any ſuch brewer or retailer ſhall conceal or convey any beer, ale, or worts not gaged, from the ſight of the gager, whereby the king may be defrauded of the duty; he ſhall forfeit 20s. a barrel. 15 *C.* 2. *c.* 11. *ſ.* 12. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 11. Mixing ſmall beer with ſtrong.

And by the 2 *G.* 3. *c.* 14. If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, ſhall mix, or cauſe or ſuffer to be mixed, in any veſſel, tub, meaſure, or otherwiſe however, any ſtrong beer, ale, or ſtrong worts, with any ſmall beer or ſmall worts or with water, after the gage ſhall have been taken; he ſhall forfeit 50l. *ſ.* 2.

No common brewer ſhall ſell, deliver, or carry out any beer or ale to any of his cuſtomers, either in whole caſk or by the gallon, in any city or market town, before notice given to an officer of exciſe, but between three in the morning and nine in the evening from *Mar.* 25, to *Sept.* 29; and between five in the morning and ſeven in the evening, between *Sept.* 29, and *Mar.* 25; on pain of 20s. a barrel. 15 *C.* 2. *c.* 11. *ſ.* 11. Time of deliver ing out.

If any common brewer, or innkeeper, ſhall on carrying out his drink, or after it is carried out, mix any ſmall beer or ſmall worts, with any ſtrong beer or ale on his dray, or in any victualler's cellar, or other place; he ſhall forfeit 5l.: and the gager may taſte the drink upon the dray, and alſo upon requeſt may enter the cellar or other room in the poſſeſſion of any innkeeper or victualler that ſhall receive any drink from a common brewer, and taſte the drink in the ſame; and if the innkeeper or victualler ſhall refuſe him to enter into his cellar or other rooms, or to taſte the drink in the ſame, he ſhall forfeit 5l. 7 & 8 *W. c.* 30. *ſ.* 23. Mixing after delivered out.

No retailer of beer or ale, ſhall after the receipt thereof from the common brewer, mix any beer, ale, or worts of extraordinary ſtrength, with any ſmall beer, ale, or worts, in any veſſel containing three gallons or more; on pain to forfeit for every barrel ſo mixt, double the duty of exciſe Mixing by the retailer.

for ſtrong beer or ale, and ſo proportionably for any greater quantity. 22 & 23 *C.* 2. *c* 5. *ſ.* 11.

Meaſure and allowance for leakage within the bills of mortality.

And for avoiding uncertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) ſhall be 36 gallons of four quarts to the gallon, according to the ſtandard in the exchequer; and the barrel of ale 32 gallons: And all other the liquors aforeſaid, ſhall be reckoned according to the wine gallon. 12 *C.* 2. *c.* 24. *ſ.* 34. 1 *W. ſt.* 1. *c.* 24. *ſ* 5.

And the common brewer, not ſelling the ſame by retail, for waſte by filling and leakage, ſhall be allowed on every 23 barrels of beer, whether ſtrong or ſmall, three barrels; and upon every 22 barrels of ale, two barrels. 12 *C.* 2. *c.* 24. *ſ.* 36.

But if any common brewer ſhall make a falſe entry, and be convicted thereof; he ſhall, over and above other penalties, forfeit the ſaid allowance for ſix months then next enſuing. *ſ.* 37.

In other places.

In all other places, 34 gallons ſhall be reckoned for a barrel of beer or ale; and the allowance for waſte ſhall be 2½ on every 23 barrels. 1 *W. ſt.* 1. *c.* 24. *ſ.* 5.

Not to be ſold in leſs quantities than 4½ gallons.

But common brewers who ſhall ſell beer, ale, or worts, in a leſs quantity at one time, than a whole caſk containing 4½ gallons, ſhall be deemed to ſell by retail, and ſhall not be entitled to any allowance whatſoever. 25 *G.* 3. *c.* 73. *ſ.* 1.

And by 32 *G.* 3. *c.* 8. *ſ.* 1. every common brewer who ſhall ſell beer, ale, or worts, in any leſs quantity than in a whole caſk, containing 4½ gallons, ſhall forfeit 50l. for every ſuch offence.

Notes of the gage and charges to be left.

Notes of every *gage*, ſigned by the gagers, containing the inches and tenths of the backs, and wants of the tuns and quality of the liquors, ſhall be left by them with the common brewers of ale or beer, or ſome ſervant (if demanded,) at the time of taking the gages; on pain of 40s. 7 & 8 *W. c.* 30. *ſ.* 46.

And by the ſame act, the gager ſhall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their ſervants, a true copy under his hand of each reſpective *charge* by him made, containing the quantity and quality of the liquors by him charged in ſuch week; and if he ſhall neglect or refuſe (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) to leave ſuch copy, or ſhall charge ſuch perſon more than ſuch copy contains, he ſhall forfeit 10l. *ſ.* 25.

The

The commiſſioners of exciſe or appeals, or juſtices of the peace, on complaint of any overcharge returned upon them by the gager, ſhall hear and determine the complaint; and examine witneſſes on oath, and thereupon, or by other due proof, may diſcharge ſuch complaint of ſo much of his charge as ſhall be made out before them. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 13. Relief in caſe of overcharge.

On complaint of any overcharge] In the caſe of *K.* v. *Sikes*, *M.* 37 *G.* 3. it was determined, that after the officer of exciſe hath charged the duty on waſh made for extracting ſpirits as directed by 26 *G.* 3. *c.* 73. if any part of the waſh is loſt afterwards by the accidental burſting of the veſſel containing the ſame, the manufacturer cannot be relieved under the above clauſe as for an *overcharge*. *Durnf.* & *Eaſt*, 7 V. 56.

All common brewers of beer and ale, ſhall once in every week; and all innkeepers, alehouſekeepers, victuallers, and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making, or retailing the ſame, ſhall once in every month, make entries at the exciſe office of all ſuch liquors, brewed, made, or retailed in that week and month reſpectively. 12 *C.* 2. *c.* 24. *ſ.* 29. Entry and payment of duties.

And all ſuch common brewers, who do not once a week make due entries, ſhall forfeit 10l. And every ſuch innkeeper, who doth not make true entries once a month, ſhall forfeit 5l. And every alehouſekeeper, victualler, or other retailer, who does not once a month make due entries, ſhall forfeit 20s. *Id. ſ.* 30.

And every common brewer who ſhall not pay within a week after he made his entry, or ought to have made his entry, ſhall pay double value of the duty; and every innkeeper, alehouſekeeper, victualler, or other retailer, who ſhall not pay within a month after he made his entry, or ought to have made his entry, ſhall pay double value of the duty. *Id. ſ.* 31. (M).

Provided that no ſuch perſon ſhall be compelled to travel for making the ſaid entries, or payment of the ſaid duties, or other cauſe whatſoever touching the ſame, if he live in a market town, out of the ſaid town; if he live out of a market town, then to no other place than to the next market town to his habitation in the ſame county, on the market day. *Id. ſ.* 32.

But no common brewer ſhall be proſecuted for any forfeiture for any miſ-entry or ſhort entry, if he ſhall in one week after the delivery of the copy of the return made by

the gager, rectify his entry according to the said return, or otherwise discharge himself. 15 *C* 2. *c.* 11. *s.* 6.

But no brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment; if it shall appear by the evidence, that he did not *bona fide* shew to the gager all the beer, ale, and worts of each respective guile, for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gager. 1 *W. sess.* 1 *c.* 24. *s.* 10.

Regulations for brewing table beer.

By 22 *G.* 3. *c.* 68. every common brewer, who shall brew *table beer* above 6s. and not exceeding [13s. 33 *G.* 3. *c.* 23. *s.* 1.] the barrel, exclusive of the excise duties; shall brew the same of one entire guile, and not from any party guile; and all beer and ale above 6s. the barrel, brewed from any party guile, shall be charged as strong beer. *s* 3.

Notice to be given of beginning to brew.

And every such brewer, whose brewhouse is situate in any city or market town, shall four hours (elsewhere 12 hours) before he begin, give to the officer notice in writing of the hour when he intends to begin; and if he does not begin at the time mentioned, or within two hours after, such notice shall be void, and he shall be obliged to give a fresh notice; and upon neglect thereof; or when having begun to brew, shall not proceed therein until the whole guile is finished; he shall forfeit 50l. *s.* 4.

Brewer to mix the several worts of each guile.

And every such brewer of table beer, shall mix the several worts of each entire guile of such table beer, so that the whole, whether it be in one or more vessels, shall be of the same quality and strength, and then, and not sooner, shall declare (or demand of the gager) the quantity and quality thereof made in the guile, before any part thereof is moved out of the vessels; and in default thereof, the officer may charge the whole as strong beer, and the duties shall be paid accordingly; and such brewer shall also forfeit 20s. for every barrel. *s.* 5.

Penalty on making any increase after declaring the quantity and quality.

And if any such brewer or his servant, after such declaration as aforesaid, shall make any increase of such table beer, by any means whatsoever; or shall mix his table beer one guile or brewing with another, or with small beer, or returned drink, or water; or by any other means whatsoever; or in case such officer shall find any table beer or worts of the said guile laid off, above the quantity

so

ſo declared; ſuch brewer ſhall forfeit 5l. and the ſervant concerned therein 20s. for every barrel found above the quantity ſo declared; and in default of payment, ſhall ſuffer three months impriſonment, unleſs it ſhall appear that ſuch increaſe or mixture was made by adding table beer of a former guile, and in the ſight of the gager. *ſ.* 5.

Mixing table beer with ale, &c.

And if any common brewer, innkeeper, publican, or other retailer of ſuch table beer, ſhall mix in any veſſel, or otherwiſe howſoever, any ſuch table beer with any ſtrong beer or ale, or ſtrong worts, or with ſmall beer or ſmall worts, or with water after the gage hath been taken, he ſhall forfeit 50l. *ſ.* 6.

When table beer is cleanſed into caſks, the ſame to be marked,

And when ſuch table beer ſhall be cleanſed into caſks, ſuch brewer ſhall mark each caſk on the moſt conſpicuous part with the letter T, of the length of four inches at leaſt, to denote that the beer therein is ſuch table beer as aforeſaid; and if he neglect the ſame, the officer who ſhall find ſuch beer in any caſk, in the poſſeſſion of ſuch brewer, without ſuch mark, ſhall charge the ſame as ſtrong beer, and the duties ſhall be paid accordingly. *ſ.* 7.

and kept ſeparate.

And ſuch caſks ſhall be kept ſeparate from all other caſks of beer or ale; on pain of forfeiting 20l. *ſ.* 8.

Perſons to whom table beer is not to be ſold.

And no ſuch brewer of table beer, ſhall knowingly ſell or deliver any ſuch table beer, either by barrel or otherwiſe, to any other common brewer, or brewing victualler, or exporter of beer, or other perſon for their uſe; on pain of forfeiting 20l. *ſ.* 9.

Exception of ſelling in fairs.

But if any perſon ſhall brew, and ſell by retail, any ſmall quantities of beer or ale in any fair, who is not otherwiſe a common brewer or retailer thereof, and ſhall before ſuch ſelling and retailing, pay the exciſe for the ſame; he ſhall be freed from all penalties relating to ſuch entries and the like. 12 *C.* 2. *c.* 24. *ſ.* 39.

Compounding.

The commiſſioners and ſubcommiſſioners may compound with innkeepers and others for the duties. *ſ.* 40.

But no perſon who hath compounded ſhall, during the term of ſuch compoſition, ſuffer any beer or ale to be brewed within his brewhouſe, for any other common brewer, without firſt giving notice to the commiſſioners or ſubcommiſſioners, and forthwith paying down the exciſe thereof; upon pain that as well the brewer who ſhall brew the ſame, as the brewer for whom it ſhall be brewed, ſhall forfeit 5l. for every barrel. 15 *C.* 2. *c.* 11. *ſ.* 14.

Utenſils liable to the penalties and duties.

All the brewing veſſels and utenſils for brewing, into whoſe hands ſoever they ſhall come, and by what conveyance

veyance or title ſoever they be claimed, ſhall be ſubject to all the debts and duties of exciſe in arrear for any beer or ale made in the ſaid brewhouſe; and ſhall alſo be ſubject to all penalties and forfeitures againſt the laws of exciſe; and it ſhall be lawful to levy debts and penalties, and uſe ſuch proceedings againſt the utenſils therein contained, as it may be lawful to do, in caſe the debtor or offender uſing the ſaid utenſils had been the real owner thereof. 15 *G.* 2. *c.* 11. *ſ.* 13. 28 *G.* 3. *c.* 37. *ſ.* 21.

Power of the juſtices.

All fines, penalties, and forfeitures, ſhall be ſued for, recovered, or mitigated, as by the laws of exciſe, or in the courts at *Weſtminſter*; half to the king, and half to him that ſhall ſue. 24 *G.* 3. *c.* 41 *ſeſſ.* 2. *ſ.* 11. 27 *G.* 3. *c.* 13. *ſ.* 5. 38.

Limitation of actions.

No information ſhall be brought againſt any common brewer, or alehouſekeeper, or cyder maker, for any miſentry or offence, but within three months after the offence committed; and notice thereof ſhall be given to him in writing, or left at his dwelling houſe, within a week after laying and entering the information. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 16. 12 & 13 *W. c.* 11. *ſ.* 17.

Delivering materials to diſtillers.

If any common brewer or maker of cyder, making beer, ale, or cyder for ſale, ſhall deliver to any diſtiller or vinegar maker, any waſh, tilts, ale-beer, vinegar-beer, or cyder, without firſt giving notice to the gager what quantity he intends to deliver, and when, and to whom; he ſhall forfeit for every barrel 20s. 8 & 9 *W. c.* 19. *ſ.* 9.

Carrying coaſtwiſe cyder or perry.

The maſter of any veſſel, in which ſhall be ſhipped any *cyder* or *perry* to be carried coaſtwiſe, ſhall, within three days after his arrival at any port where any part thereof is to be delivered, give to the proper officer of exciſe there an account in writing of the whole quantity by him received on board, diſtinguiſhing therein the names and places of abode of the perſons by whom the ſame was put on board, and at what place; and the names and places of abode of the perſons to whom the ſame was conſigned, and where to be delivered: Which if he ſhall not do, or ſhall deliver any part thereof at ſea, or in any other place than where it was conſigned, (unavoidable accidents excepted,) he ſhall forfeit 20l. And he ſhall, within 21 days after his arrival at the place of delivery, land all the cyder and perry to be delivered there; on pain of forfeiting all ſuch as ſhall not be ſo landed, and the ſame may be ſeized by any officer of exciſe, together with the caſks or other package. 6 *G.* 3. *c.* 14. *ſ.* 8.

II. Things sold by auction.

By the 17 *G.* 3. *c.* 50. several duties were imposed on estates and goods sold by auction; which act is repealed by the 19 *G.* 3. *c.* 56. so far as it concerns the licensing of auctioneers, and collecting and managing the duties: which acts, taken together, seem to enact as followeth.

Auctioneer to be licensed.

No person exercising the trade or business of an auctioneer or seller by commission, at any sale of any estate, goods, or effects whatsoever, by outcry, knocking down of hammer, by candle, lot, parcel, or any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser, or who shall act in such capacity, shall presume to deal in, vend, or sell, any estate, goods, or effects whatsoever, by public sale, or otherwise, by way of auction as aforesaid, without taking out a licence; which, if it is within the bills of mortality, shall be granted by the commissioners of excise, or such person as they shall appoint; and elsewhere, by the collectors and supervisors, within their several collections and districts, under their hands and seals. 19 *G.* 3. *c.* 56. *s.* 3.

In which licence shall be set forth the true name and place of abode of the person taking out the same. *Id.*

And for the said licence, if it is within the limits of the chief office of excise in *London*, whether the same be granted for selling by way of auction within the said limits or in any other part of *England* or *Wales*, shall be paid immediately on the taking out thereof, the sum of 20*s.*; and elsewhere 5*s.*: over and besides any other duties or payments for trading in or vending any gold or silver plate, or otherwise. *Id.*

And if any person shall act without such licence, he shall forfeit 100*l.* if it is within the bills; and elsewhere, 50*l.* (N) *s.* 4.

And the said licence shall be renewed annually, ten days at least before the expiration of the former. *Id.*

Bond to be given.

And at the same time that the auctioneer takes out his licence, he shall give bond to the king, with two sureties, in the sum of 200*l.* if it is within the bills; and elsewhere, in 50*l.*; that he will account and make payment, as is herein after directed. *s.* 7.

Duty on things sold by auction.

And for every 20*s.* of the purchase money arising or payable by virtue of any sale by auction, of any interest in possession or reversion, in any freehold, copyhold, or leasehold lands, tenements, houses, or hereditaments, and

of any annuities or money charged thereon; and of any utensils in husbandry and farming stock, ships and vessels; and of any reversionary interest in the public funds; and of any plate or jewels (*a*); shall be paid by the auctioneer or agent, 27 *G.* 3. *c.* 13. *Schedule* (F), - $3\frac{1}{2}$d.
By 37 *G.* 3. *c.* 14. more - - $2\frac{1}{2}$d.
6d.

And for every 20s. of the purchase money arising or payable by virtue of any sale by auction, of furniture, fixtures, pictures, books, horses, and carriages, and all other goods and chattels whatsoever, shall be paid in like manner, 27 *G.* 3. *c.* 13. *Schedule* (F), - 7d.
By 37 *G.* 3 *c* 14. more - - 3d.
10d.

Piece goods excepted.

But by 29 *G.* 3. *c* 63. no duty shall be paid for piece goods sold by auction wove in this kingdom, which shall be sold entire in the piece or quantity as taken from the loom, and in lots of the price of 20l. or upwards; and so as the same be sold in no other than entered places, and openly shewn and exposed at such sale. *s.* 1, 2.

And the auctioneer shall, besides the bond given on receiving his licence, give a further bond with two sureties in 5000l. that he will within 14 days after every such sale, deliver an account thereof at the next excise office, and will not sell any goods contrary to the directions of this act. *Id. s.* 3.

And goods from *Yucatan*, &c.

And by 30 *G.* 3. *c.* 26. all goods imported by way of merchandize from *Yucatan*, [and by 32 *G.* 3. *c.* 41. all whale oil, whale bone, ambergris, and head-matter, and all skins of seals, and other animals living in the sea, and also elephants teeth, palm oil, dying wood, drugs, and other articles for dyers use, and all mahogany and other unmanufactured wood for the use of cabinet-makers and other manufacturers, imported in *British* ships from *Africa*, or any *British* settlement abroad,] shall be free of the excise duty on the first sale thereof at auction, by or for the account of the original importer to whom the same were consigned, and by whom they were entered at the custom-house, so as such sale be made within 12 months after such goods are imported, and the same be sold by a licensed auctioneer.

(*a*) Auctioneer selling plate to be deemed a trader. 31 *G.* 2. *c.* 32. *s.* 6. See **Excise.** *(Plate.)*

Provided

Provided alſo that nothing herein ſhall extend (1) to any ſale by auction of eſtates or chattels made by order of the court of chancery or exchequer, or courts of great ſeſſions in *Wales*; or (2) to any ſale made by the *Eaſt India* or *Hudſon's bay* companies; or (3) by order of the commiſſioners of cuſtoms or exciſe; or (4) of the board of ordnance; or (5) commiſſioners of the navy or victualling offices; or (6) any ſuch ſales made by the ſheriff, for the benefit of creditors, in execution of judgments; or (7) of goods diſtrained for rent; or (8) for non-payment of tithes; or (9) of effects of bankrupts ſold by aſſignees; nor (10) to goods imported by way of merchandize from any *Britiſh* colony in *America*, the ſame being of the growth, produce, or manufacture of ſuch colony, on the firſt ſale thereof, on account of the original importer to whom they were conſigned, and by whom they were entered at the cuſtom-houſe, ſo as ſuch ſale be made within twelve months after importation; nor (11) to any ſhips or their cargoes condemned as prize, and ſold for the benefit of the captor; nor (12) to any ſhips or goods wrecked or ſtranded, ſold for the benefit of the inſurers or proprietors; nor (13) to the ſale of any goods damaged by fire and ſold for the benefit of the inſurers; nor (14) to any auction to be held on the account of the lord or lady of the manor for the granting any copyhold or cuſtomary meſſuages, lands, or tenements, for the term of a life or lives, or any number of years; nor (15) to any auction to be held for the letting or demiſing any meſſuages, lands, or tenements, for the term of a life or lives, or any number of years, to be created by the perſon on whoſe account ſuch auction ſhall be held; nor (16) to the ſale of any wood, coppice, produce of mines or quarries, or materials for working the ſame, or to the ſale of any cattle, and live or dead ſtock, or unmanufactured produce of land,—ſo as ſuch ſale of woods, coppices, produce of mines or quarries, cattle, corn, ſtock, or produce of land be made whilſt they continue on the lands producing the ſame, and by the owner of ſuch lands, or proprietor of or adventurer in ſuch mines or quarries, or by their ſteward or agent. 17 *G.* 3. *c.* 50. *ſ.* 11, 12, 13. 19 *G.* 3. *c.* 56. *ſ.* 13, 14, 15.

Further exceptions.

The auctioneer, if it is within the limits of the chief office of exciſe in *London*, ſhall give two days notice at the ſaid office, elſewhere three days notice, to the collector or at the next exciſe office, in writing, ſigned by him, ſpecifying the particular day when ſuch ſale ſhall begin; and ſhall,

Previous notice to be given of the ſale.

ſhall, at the ſame time, or within 24 hours after, deliver a written or printed catalogue, atteſted and ſigned by ſuch auctioneer or his known clerk; in which catalogue ſhall be particularly enumerated every article, lot, parcel, and thing intended to be ſold at ſuch auction. And if he ſhall preſume to make ſale without delivering ſuch notice and catalogue, or ſell any eſtate or goods not enumerated therein, he ſhall forfeit 20 l. 19 *G.* 3. *c.* 56. *ſ.* 9.

Declaration to be made, whether the ſale took place.

And every auctioneer who ſhall have delivered ſuch notice or catalogue as aforeſaid, ſhall, (within 28 days if within the limits of the chief office of exciſe, elſewhere within ſix weeks,) after the day ſpecified in ſuch notice for ſuch ſale, deliver at ſuch chief office, or to the collector of exciſe in whoſe collection ſuch ſale has been or was intended to be, a declaration in writing ſetting forth whether or not any ſuch ſale had been or was opened or begun under ſuch notice, or any article, lot, parcel, or thing contained in ſuch catalogue was bid for or ſold at ſuch auction; and ſuch auctioneer, or perſon acting as his clerk as aforeſaid, ſhall make oath to the truth of ſuch declaration before the ſaid commiſſioners or collector of exciſe; on pain of forfeiting 50 l. for every neglect or refuſal of delivering ſuch declaration verified as aforeſaid. 32 *G.* 3. *c.* 11. *ſ.* 1.

Buying in by the owner.

Provided, that if the real owner ſhall become the purchaſer by his own bidding, or the bidding of any other on his behalf, without fraud or colluſion, the commiſſioners or other officers ſhall make to the owner an allowance of the ſaid duties: provided notice [in writing ſigned by the owner and intended bidder. 28 *G.* 3. *c.* 37. *ſ.* 20.] be given to the auctioneer before ſuch bidding both by the owner and perſon intended to be the bidder, of ſuch perſon being appointed by the owner; and provided ſuch notice be verified by the oath of the auctioneer, as alſo the fairneſs of the tranſaction to the beſt of his knowledge and belief. And if any diſpute ſhall ariſe concerning the fairneſs of the tranſaction, the proof thereof ſhall lie on the auctioneer; and on failure therein, or in caſe of any unfair practice, no ſuch allowance ſhall be made. 19 *G.* 3. *c.* 56. *ſ.* 12.

Duty how to be paid.

The aforeſaid duties ſhall be a charge upon the auctioneer, immediately upon knocking down the hammer, or other cloſing of the bidding. *ſ.* 6.

And he ſhall (in purſuance of his bond entered into at the time of his licenſing) within 28 days, if it is within the limits of the chief office of exciſe in *London*, elſe-

where,

where, within six weeks, deliver in an *account* in writing of the total amount of the money bid at each sale, and of the several articles, lots, or parcels there sold, and the price of each:

And shall at the same time make *payment* of the duties: Which he may retain out of the produce of the sale, or deposit made at such sale; or otherwise recover the same, by action of debt, or on the case, against the person who employed him, or on whose account the goods were sold:

And every person so acting as auctioneer, or the person who acted as his clerk at such sale, if any, shall make *oath* to the truth of the account:

And if such auctioneer shall neglect to deliver in his account, or to make payment, or if it shall appear that it was not a true and just account, the commissioners may put his bond in suit, unless they shall find sufficient cause to forbear the same; and in case of a verdict or judgment against him, the licence shall be void. *s.* 7, 8.

But if such auctioneer, not being within the limits of the chief office of excise in *London*, shall not be prepared to deliver in his account to the collector within whose collection the notice was delivered and such sale by auction made; he may deliver in his said account within six weeks after every such sale at the chief office of excise in *London*, and at the same time deliver a true copy of the notice and of the catalogue delivered by him before to the collector: And if he shall neglect to deliver such copy of the said notice, or of the said catalogue, he shall forfeit 20 l. *s.* 10.

And by 38 *G.* 3. *c.* 54. every auctioneer, who shall neglect or refuse to make payment within the time limited by law, of any duty chargeable on sales by way of auction by him held, shall forfeit double the duty; and in case within 14 days next after such auctioneer shall have been convicted in such penalty, and execution or process shall have issued on such conviction to levy such penalty; or he shall not have sufficient goods or chattels whereon to levy the whole of such penalty, and the same or any part thereof shall remain unpaid at the end of such 14 days; or if it shall appear that he hath acted contrary to the true intent and meaning of his bond, the said commissioners of excise may cause such bond to be put in suit, unless they shall see sufficient cause to forbear the same; and in case of a verdict against such auctioneer, his licence shall be void. *s.* 2.

And whereas there is no provision at present to relieve auctioneers against any overpayment made, except in cases

where

where sales are rendered void by reason of the person for whom sold having no title thereto, or no right to dispose thereof; for remedy whereof, if any auctioneer shall make any overpayment for or on account of the duty, he may complain before the said commissioners or justices respectively within whose jurisdiction such sale was made, who upon such complaint may hear and determine the same, and examine witnesses upon oath on either side, and on due proof may relieve the party so complaining of so much of such payment as shall appear to have been overpaid. *s.* 3.

Proviso with respect to fraudulent sales of goods seized by the sheriff.

And for the preventing of frauds, every auctioneer, who shall sell any estate or goods that have been seized by the *sheriff*, for the benefit of creditors in execution of a *judgment*, shall specify and enumerate in the catalogue, as well the particular estate and effects to be sold, as the exact sum to be levied under such execution; and the sheriff shall subscribe and sign such catalogue, and certify at the foot thereof that all the said estates and effects were really and truly the property of the person against whom such judgment was had, and that the same were actually seized in execution of the same judgment: And every auctioneer, employed by the *assignees* under a commission of *bankruptcy*, to sell the effects of any bankrupt, shall likewise specify and enumerate in the catalogue, the particular goods and effects then to be sold; and the assignees, or assignee, if only one, shall subscribe and sign such catalogue, and certify at the foot thereof that all the estates and effects were really and truly the property of the said bankrupt at the time of suing out the commission. Which respective catalogue, so signed and certified, shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *sheriff* or *assignee* shall insert or suffer to be inserted in such catalogue any estate or effects, other than such as were really and truly the property of the debtor or bankrupt, or shall not certify on the catalogue the true sum to be levied, he shall forfeit 20 l. *s.* 16.

Goods damaged by fire.

And every auctioneer employed to sell any goods damaged by *fire*, for the benefit of the *insurers*, shall specify and enumerate in the catalogue, the particular goods then to be sold; and the *insurers*, or the *insurer*, if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the goods in such catalogue were really and truly sold for the benefit of the insurers: Which

catalogue so signed and certified, shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *insurer* shall insert or suffer to be inserted in the catalogue, any goods other than such as were really and truly to be sold for the benefit of him or them as aforesaid, or shall not certify on the catalogue the true particular of the goods to be sold, he shall forfeit 20*l.* *s.* 17.

Sale void for defect of title.

If the sale shall be rendered void, by reason that the person for whose benefit the estate or goods were sold had no title or right to dispose thereof, the auctioneer who paid the duty may complain to the commissioners of excise or justices of the peace within whose jurisdiction respectively the sale was made, who may hear and determine all such complaints, and relieve the party complaining of so much as shall appear to have been overpaid. *s.* 11.

But by 28 *G.* 3. *c.* 37. all such complaints shall be laid within 12 calendar months after such sale, if the same be rendered void as aforesaid within that time; but if otherwise, then within 3 calendar months after the discovery of such defect of title, and not otherwise. *s.* 19.

A bidder may retract his bidding, before the hammer is down.

In the case of *Payne* against *Cave*, *E.* 29 *G.* 3. it was determined, That a bidder at an auction under the usual conditions that the highest bidder shall be the purchaser, may retract his bidding any time before the hammer is down. For the auctioneer is the agent only of the vender, and the assent of both parties is necessary to make the contract binding. Every bidding is nothing more than an offer on one side, which is not binding until assented to by the seller, which is signified on his part by knocking down the hammer. *Durnf.* and *East*, 3 V. 148.

Levying of fines and forfeitures.

Finally, All fines, penalties, and forfeitures shall be sued for, recovered, or mitigated, as by the laws of excise, or sued for in the courts at *Westminster*; and be distributed (all necessary charges first deducted) half to the king, and half to him that shall sue. 19 *G.* 3. *c.* 56. *s.* 19.

III. Bricks and tiles.

Duty. By 27 *G* 3. *c.* 13. *Shedule* (F), the following duties are impoſed:

	£.	s.	d.	£.	s.	d.
For every 1000 *bricks* made in *Great Britain*, ſhall be paid by the maker, a duty of - -		0	2	6		
And by 34 *G.* 3. *c.* 15. *ſ.* 1. an additional duty of - -		0	1	6		
And by 37 *G.* 3. *c.* 14. more -		0	1	0		
					0	5	0
For every 1000 plain *tiles* - -		0	3	0		
And by 34 *G.* 3. *c.* 15. *ſ.* 1. an additional duty of - - -		0	1	10		
					0	4	10
For every 1000 *pan tiles* or *ridge tiles*	0	8	0			
And by 34 *G.* 3. *c.* 15. *ſ.* 1. an additional duty of - - -		0	4	10		
					0	12	10
For every 100 *paving tiles*, not exceeding 10 inches ſquare - -		0	1	6		
And by 34 *G.* 3. *c.* 15. *ſ.* 1. an additional duty of - - -		0	0	11		
					0	2	5
Ditto, if exceeding 10 inches ſquare	0	3	0			
And by 34 *G.* 3. *c.* 15. *ſ.* 1. an additional duty of - - -		0	1	10		
					0	4	10
For every 1000 *tiles*, other than ſuch as before deſcribed, by whatſoever name called or known - -		0	3	0		
And by 34 *G.* 3. *c.* 15. *ſ.* 1. an additional duty of - - -		0	1	10		
					0	4	10

For the duties on exportation and importation, ſee the *ſchedules* annexed to the ſaid acts of 27 *G.* 3. *c.* 13. and 34 *G.* 3. *c.* 15. *ſ.* 4, 5. and alſo 37 *G.* 3. *c.* 14.

Tiles for draining lands. Provided always, that *tiles* made for the ſole purpoſe of draining land $19\frac{3}{10}$ inches long by $13\frac{3}{10}$ inches broad, and bent into a ſemi-elliptical form, the inſide of the crown of the arch thereof being not leſs than 7 inches perpendicular, from a ſtraight line drawn from the one to the other ſide thereof, after the ſame is ſo bent; and ſuch ſides not being at any part thereof more than 5 inches diſtant from each other on the inſide, and as nearly of the dimenſions, and bent as nearly into the form aforeſaid as may be; to be uſed for the purpoſes aforeſaid; ſhall not be ſubject to any

any of the said duties charged by the aforesaid act, or by this act. 34 *G.* 3. *c.* 15. *s.* 2.

Notice to be given.

And every maker of bricks or tiles before he begins to make, shall give or leave notice in writing at the next excise office, of his name and place of abode, and of the sheds, workhouses, or other places where such bricks or tiles are intended to be made; on pain of 100*l.* 24 *G.* 3. *c.* 24. *sess.* 2. *s.* 4.

When the duty shall be charged.

All bricks and tiles chargeable with the said duties, shall be taken account of, and charged by the officer, whilst they are drying, after being turned out of the moulds, and before removed to the kiln, or clamp for burning, for which purpose any officer may enter into the fields, sheds, or other places, where such bricks and tiles shall be making, and shall take an account thereof in writing, and leave a copy thereof (if demanded) with such maker, on pain of 40*s.*; and if any person shall obstruct such officer, he shall forfeit 50*l.* *s.* 5. 11. 14.

Allowance for waste.

And the officer in charging the duty, shall allow ten for every 100 when charged in the field before burned, in compensation for all waste, loss, or damages. *s.* 6.

Not to be removed until surveyed.

And if the maker shall remove any bricks or tiles to the kiln or clamp, or other place of burning, from out of the field or place where they shall be put or placed to dry, before the officer shall have taken an account thereof, he shall forfeit 50*l.* And all bricks and tiles so carried away, and being found in the possession of any maker, or trader therein, or person for his use, shall be forfeited, and may be seized, or the value thereof shall be forfeited. 25 *G.* 3. *c.* 66. *s.* 2.

Provided, that no such maker shall be subject to the said penalty; if the officer shall fail to take an account, on due notice given him three days before such removal. 24 *G.* 3. *c.* 24. *sess.* 2. *s.* 8.

Bricks, &c. not surveyed to be kept separate.

And the maker shall keep the bricks and tiles unsurveyed, separate from those that have been surveyed, on pain of forfeiting 50*l.* 25 *G.* 3. *c.* 66. *s.* 3.

To be properly placed whilst drying.

And such maker of bricks and tiles shall, while the same are drying, place them in such manner as the officer may easily and securely take an account thereof; and if he shall place them in any irregular or unusual manner, with intent to make it difficult or unsafe for the officer to take such account, he shall forfeit 50*l.* *Id.* *s.* 4.

Concealing to evade the duty.

And if any maker shall fraudulently conceal, or hide any bricks or tiles, in any part of the operation of making, with intent to evade the duties, he shall forfeit the same, and also 20*l.* 24 *G.* 3. *c.* 24. *sess.* 2. *s.* 10.

Makers to give an account every six weeks, and to clear off the duty.

And every such maker shall once in every six weeks make entry in writing upon his oath, or on the oath of his chief workman, at the next excise office, of all bricks and tiles by him made within that time, on pain of 50l. And shall also, within six weeks after such entry, clear off all the duties then due thereon; on pain of double duty. And if any person shall carry away such bricks or tiles before the duty be cleared off, he shall forfeit double the value thereof. But such maker shall not for making such entry, be obliged to go further than the next market town. *s.* 12, 13.

Utensils liable.

And all tools, implements, and utensils used in making such bricks or tiles, in custody of the maker, &c. shall be liable to be seized for any debts or penalties, (arising or incurred under this act,) whether the debtor or offender be the lawful owner thereof or not. *s.* 15.

Bricks, &c. may be exported duty free.

Bricks or tiles for which the duties have been paid, may be exported, and on security given before the shipping thereof that the same shall not be relanded, the person exporting the same, shall be allowed a drawback of such duties; and in case such bricks or tiles shall be relanded, the same shall be forfeited to the use of his majesty, over and above the penalty of such bond. *s.* 16, 17, 18. 27 *G.* 3. *c.* 13. *Sched.* (F).

Penalties, how to be recovered.

All penalties and forfeitures are to be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*, and to be distributed half to the king, and half to him that shall sue. 24 *G.* 3. *c.* 24. *sess.* 2. *s.* 21.

IV. Candles.

Tallow chandlers to be licensed, and to be renewed annually.

Every chandler, or maker of candles for sale, other than wax candles, shall take out a licence from the officers of excise, for which he shall pay 1l. and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 10l. 24 *G.* 3. *c.* 41. *sess.* 2. *s.* 1. 7.

Makers or sellers of wax or spermaceti candles to be licensed.

And every person *making* wax or spermaceti candles, shall take out a licence, for which he shall pay 5l. and for *trading* in, or *selling* such candles 5s. and shall renew the same as aforesaid, on pain of forfeiting 20l. 24 *G.* 3. *c.* 36. *s.* 9, 10, 11, 12.

And moreover three 5 *per cents.* imposed by 19 *G.* 3. *c.* 25. 21 *G.* 3. *c.* 17. and 22 *G.* 3. *c.* 60. shall be paid upon the amount of the said licence duties for making and selling wax or spermaceti candles. *s.* 10.

Persons in partnership.

But persons in partnership need only take out one licence for one house. 24 *G.* 3. *c.* 41. *s.* 13.

Provided

Provided always, that no person who hath paid such licence duty for *making*, shall be obliged to take out a licence for *selling* also, during the same year. *Id. s.* 14. Need not be licensed both as *makers* and *sellers*.

And by 25 *G.* 3. *c.* 74. After 1st *August* 1785, no person residing within the limits of the head office, shall be permitted to make candles, unless he occupy a tenement of 10*l.* a year, and for which he shall be assessed in his own name, and shall also pay to the parish rates: elsewhere, unless such person shall be assessed and pay to church and poor. And no entry made shall be of any avail to any person, for any longer time than he shall be qualified as aforesaid. *s.* 25. Makers of candles to be rated.

By 27 *G.* 3. *c.* 13. a duty of 1½d. was imposed on every pound avoirdupois of candles of tallow or other candles whatsoever (except wax and spermaceti candles) made in *Great Britain*. But by 32 *G.* 3. *c.* 7. *s.* 1. ½d. of the said duty is taken off, so that there remains to be paid by the maker a duty of - - - £. 0 0 1 Duty.

And for every pound of wax or spermaceti candles, or which are usually called or sold as such (notwithstanding the mixture of any other ingredients therewith) - - - - 0 0 3½

27 *G.* 3. *c.* 13. *Sched.* (F).

For the duties on exportation and importation, see the schedule annexed to the said act.

And by 24 *G.* 3. *c.* 11. *sess.* 2. All powers given to the excise officers or other persons by former acts, to compound with any person for the duties on candles, shall cease. *s.* 10. Compounding abolished.

But the said duties shall not be charged on such small rush lights as shall be made by any persons to be used in their own houses only, so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in, or once drawn through grease or kitchen stuff, and not through any tallow melted or refined. 8 *An. c.* 9. *s.* 31. 24 *G.* 3. *c.* 11. *sess.* 2. *s.* 5. Rush lights excepted.

During the continuance of the duties upon candles, no person shall use in the inside of his house, any lamp, wherein any oil or fat (other than oil made of fish within *Great Britain*) shall be burned for giving light; on pain of 40*s.* 8 *An. c.* 9. *s.* 18. Oil not to be used instead of candles.

No maker of candles shall erect, set up, alter, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting of wax, tallow, or other materials to be made into candles; with- Places for making candles to be entered.

out notice thereof being first given in writing at the next office of excise; on pain of 50l. *s.* 6.

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting-house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. *s.* 17.

And by the 11 *G. c.* 30. If any maker of candles shall use any melting house, shop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or use any copper or other vessel for melting the same, or any moulds or other utensils for making of candles, without having made entry thereof in writing at the next excise office; he shall forfeit 100l. *s.* 23.

Officer to enter and take account.

The officer shall at all times, by day or by night, and if in the night, then in presence of a constable, be permitted on his request, to enter the house, melting-house, warehouse, or other place, belonging to, or used by any person who shall be a maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker; and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 *G. c.* 28. *s.* 30.), he shall forfeit 40s. 8 *An. c.* 9. *s.* 10.

And the officer between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening, and five in the morning, with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up, shall on his request be opened; on pain that every person obstructing or molesting him shall forfeit 100l. 11 *G. c.* 30. *s.* 24.

And whereas great frauds have been committed, by the officers being prevented to enter the workhouses and places of makers of candles by night, without the presence of a constable: It is enacted, that they shall at all times, by day or by night, be permitted upon their request, to enter into the house, warehouse, melting-house, or other place whatsoever, belonging to, or used by any maker of candles, in like manner as such officers might before have done in the day time. 24 *G.* 3. *c.* 11. *sess.* 2. *s.* 7.

But

But by the 27 G. 3. c. 31. No officer shall enter such workhouse or place, between the hours of *eleven* at night and *five* in the morning without the presence of a constable, unless such maker shall have any course or making of candles unfinished, or in operation; or shall have any legal notice depending, of his intention to make between those hours; or shall have made any preparation for making any course or making of candles. *s.* 20. Exception.

And no entry shall be deemed to be withdrawn whilst any duty shall be depending and unpaid, or any copper, furnace, or other utensil shall be standing in any such melting-house, workhouse, warehouse, storehouse, shop, room, or other place. *Id. s.* 18. No entry to be deemed withdrawn whilst any duty is unpaid.

And if the officer on his searching any unentered house or place, shall find candles either made or making, or tallow or other materials melting or melted, or cottons or rushes spread, or any copper, mould, or other utensil warm with tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100l. for having used the same not being entered. 11 G. c. 30. *s.* 25. Finding candles, &c. in unentered places.

And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name. *Id. s.* 26. Summoning offenders.

And every maker of candles for sale shall, before he begins to make or dip any course or making of candles, not being mould candles, [but by 24 G. 3. c. 11. *sess.* 2. *s.* 9. the exception of *mould candles* is taken away,] or make preparation for the same, give notice in writing to the officer of such his intention, and declare the time of the day or night when he intends to begin, and the number of sticks of which such making is intended to consist, and the size and number of each stick, and the number and size of the moulds he intends to fill and draw, and how often they are intended to be filled and drawn in each making: and in default thereof, or if he have at such making, more sticks or more candles, or of a larger size, or more or larger moulds, or shall draw the said moulds a greater number of times than mentioned in such notice or declaration, or increase the weight of such candles by redipping or otherwise, he shall forfeit 50l. And if after such notice, he shall not begin at the time mentioned therein, or within three hours of it, such notice shall be void. 10 *Ann.* c. 26. *s.* 106. 11 G. c. 30. *s.* 27. 24 G. 3. c. 11. *sess.* 2. *s.* 9. Notice to be given of the time of making.

Times limited for giving such notice.

And after 1st *August* 1785, every such maker shall give to such officer, notice in writing of the hour when he intends to begin to spread cottons, wicks, or rushes, for any course or making of candles, and the hour and time when he intends to begin to run in or dip such wicks, which notice shall be given (if within the limits of the *head office*, 6 hours; if in any *city* or market town, 12 hours; elsewhere, 24 hours) before he shall begin, on pain of forfeiting 50l. 25 G. 3. c. 74. s. 29.

And if such maker shall not begin and proceed at the time mentioned in such notice, or within three hours next after, such notice shall be void. *Id.* s. 30.

To continue working without interruption.

And whereas chandlers do sometimes after having given such notice as aforesaid, and after beginning to spread cottons, wicks, or rushes, leave off for long intervals, and thereby both harass the officers, and defraud his majesty; for remedy thereof, it is enacted, that after the 1st of *August* 1786, every maker of candles having begun to spread cottons, wicks, or rushes, for any course or making of candles (other than mould candles) shall proceed and continue, without delay or interruption, until the whole intended to be used in such course or making is finished; and the time for beginning to run in or dip such cottons, wicks, or rushes, respectively, shall not be more than five hours after the beginning to spread the same as aforesaid; and such maker shall continue to run in or dip such cottons, &c. respectively without interruption until the whole is finished, on pain of forfeiting 50l. for every such offence. 26 G. 3. c. 77. s. 6.

To begin to dip within 5 hours of spreading the cotton.

And if in any such notice the hour or time specified for beginning to run in or dip such cottons, &c. shall be more than five hours after the time specified in the notice for beginning to spread such cottons, &c.; such notice shall be void, and such chandler giving the same, shall be liable to all such fines, penalties, and forfeitures, as he would have been if no notice had been given. *Id.* s. 7.

What shall be deemed beginning to work.

And lighting a fire under a vessel, for melting the materials, or finding in such vessel, or in any mould, the materials melted or melting, or cottons or rushes spread or spreading, shall be deemed to be such a *beginning to work* as shall make him liable to the said forfeiture. 11 G. c. 30. s. 28.

Furnace doors, &c. to be locked or secured.

And every candlemaker shall, at his own expence, affix sufficient fastenings, to be approved of in writing by the officer, to every furnace, copper, pan, or other utensil for melting materials, to be made into candles; and also

covers

covers with proper fastenings, to be approved as aforesaid, to every dipping mould which such maker shall have in his custody; and every such utensil shall be securely locked, fastened, or sealed, by the officer as soon as any melting shall be finished; and every such dipping mould, with the cover, shall be locked, fastened, or sealed up in like manner, as soon as the dipping shall be finished. And such maker shall provide a secure room, place, or chest with fastenings, to be approved as aforesaid, for locking up all moulds for making of mould candles, which shall be locked up and secured by such officer when the same shall cease to be used. And when such maker shall be desirous to light a fire, and to have such furnace door, copper, pan, utensil or dipping mould opened; or to use such moulds; he shall give to such officer 6 hours notice in writing if within the limits of the *chief office*; 12 hours if he shall reside *in* any *market town*; and 24 hours if he reside *out of a market town*; and such officer shall attend at the time mentioned in such notice, and open such doors and places as the case may require: and if such maker shall not light a fire, or shall not proceed to use such utensils, within one hour after the doors are opened, such notice shall be void, and such officer shall proceed to lock up and secure the same again in manner as aforesaid, and such maker shall be obliged to give a fresh notice. And if such maker shall neglect or refuse to do and perform any of the matters aforesaid; or to pay for any locks, keys, or necessary fastenings which shall have been provided by such officer; or if any person shall hinder any officer in fixing such locks or fastenings, or in locking up, sealing, or securing the same in such manner as he shall think most effectual to answer the purposes of this act; or shall open any such furnace, copper, pan, utensil, dipping mould, or door, before the same shall have been opened by the officer; or shall wilfully break or damage any lock, seal, or fastening; he shall forfeit 100l. 27 *G.* 3. *c.* 31. *s.* 21.

Having moulds not locked up.

And if there shall be on the premises in the custody of any candlemaker, any mould proper to be made use of for making mould candles, not locked up and secured as aforesaid, unless after notice given as aforesaid; every such maker shall forfeit 100l. *Id. s* 22.

The officer shall charge for materials missing.

The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive

receive satisfaction what is become thereof, the officer may charge such quantity of candles, as the materials so missing in his judgment would have made, not exceeding 108lb. of candles for every 112lb. of materials missing, and so proportionably. And if any such maker shall obstruct the officer, he shall forfeit 20l. 8 *An. c.* 9. *s.* 12, 13.

Candles spoiled in making.

Candles cracked or spoiled in making, may be defaced by the officer, who shall make allowance for the duty, *s.* 29.

Removing candles before surveyed.

No maker of candles shall (on pain of 20l.) remove any candles before the officer hath taken account of the same, without giving to the officer, within the bills, 24 hours notice; and elsewhere, two days notice, of his intention to remove the same. *s.* 14.

Candles unsurveyed to be kept separate.

The maker shall keep his candles which have not been surveyed, separate from all other candles which have been surveyed, for 24 hours after making, within the bills, and for two days elsewhere; unless they shall have been sooner surveyed by the officer; on pain of 5l. *s.* 15.

Search for candles concealed.

If the officer shall have cause to suspect that candles are privately making in any place; or that any candles are concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner [two commissioners, 23 *G.* 2. *c.* 21. *s.* 34.] or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night, in presence of a constable,) to enter into every such place suspected, and to seize and carry away as forfeited all such candles as he shall there find so privately making, together with all materials then ready or preparing for making the same, and also all such candles as he shall find so concealed, together with the boxes or other package containing the same: And the person that shall be found privately making such candles, or in whose possession any such shall be found, shall forfeit 100l. 5 *G.* 3. *c.* 43. *s.* 20.

And if any person shall obstruct any such officer in searching any such suspected places, or in seizing such candles, he shall forfeit 100l. 23 *G.* 2. *c.* 24. *s.* 34.

Further penalty of removing, mingling, or concealing.

If any maker of candles for sale shall mingle candles which have not been weighed by the officer, with those which have; or shall fraudulently remove any before weighing; or conceal any candles or materials; he shall forfeit 100l. 11 *G. c.* 30. *s.* 30.

And

And if any officer shall discover that any making of candles is carried on in any private workhouse, room, or place, whereof no notice has been given as aforesaid; and shall at the same time discover any person knowingly assisting, or any ways concerned in carrying on the same, he shall forfeit 20l. over and above all penalties which such maker shall be liable to: And such officer may detain such person, and carry him before a justice, who on confession, or oath of one witness, may convict such offender, who, immediately on conviction, shall pay 20l. into the hands of such officer; and on his refusing or neglecting, such justice shall commit him to the house of correction to hard labour, for *two* months, unless the penalty be sooner paid: And if such person shall be convicted of a second offence, he shall in like manner pay 40l. or be committed for *four months*. 25 *G.* 3. *c.* 74. *s.* 31. Persons assisting in privately making candles.

Every person who shall make any candles shall once in every week make a true entry in writing, at the next excise office, of all candles by him made within such week; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the said week; on pain for every neglect of entry to forfeit 20l. Which entry shall be upon the oath of the maker or his chief workman, according to the best of their knowledge and belief; and said entries and oaths, within the bills, to be made with and administered by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. 25 *G.* 3. *c.* 74. *s.* 27. Entry of candles made.

But he shall not be obliged to go further than the next market town for making such entry. 8 *An.* *c.* 9. *s.* 8.

And the maker shall in one week, after such entry, pay and clear off the duties, on pain of double duty; and no maker after default in payment shall sell, deliver, or carry out any candles till he hath paid off the duty, on pain of double value. 25 *G.* 3. *c.* 74. *s.* 28. Duty to be cleared off.

And if there shall be found in the possession of any maker of candles for sale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid, he shall be chargeable with the duties; and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours notice in writing to the officer, or at the next Candles not entered, nor duty paid.

next excise office, of his intention to buy the same, and of whom. 11 G. c. 30. f. 29.

Persons having candles in their possession which have not been charged with the duty.

And if any person shall knowingly receive, buy, or have in his possession, any candles after the same shall be removed from the place where they were made and ought to have been charged with the duty, before the said duty hath been charged (except such as have been condemned as forfeited,) whether he claim any property or interest therein or not, shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sorts shall then bear in *London*. 26 G. 3. c. 77. f. 10, 11.

Candles, where to be sold.

No person shall expose to sale any candles, unless in his publick shop or warehouse, publick fair or market, on pain of 5l. 8 *Ann.* c. 9. f. 18.

Candles carried coastwise.

Cocquets granted for shipping candles to be landed in any other part of the kingdom shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited and seized, together with the package. 23 G. 2. c. 21. f. 29. (a)

Exportation and importation.

No candles shall be imported, otherwise than in some package containing at least 224 lb. of neat candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50l. f. 27.

But on information brought against such master, he may detain the wages of the mariners till it be determined; and if it shall appear, that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages in payment of the forfeiture. 26 G. 2. c. 32. f. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

And all wax candles seized on importation or otherwise, and condemned for non-payment of the duties, shall be broken or otherwise rendered unfit for use. 24 G. 3. c. 36. *sess.* 2. f. 7.

(a) The provisions of 23 G. 2. c. 21. respecting *candles*, are the same respecting *soap* and *starch*.

Candles for which the duty hath been paid, may be exported, and the duty drawn back. 8 *An.* c. 9. *ſ.* 24, 25, 26. 27 *G.* 3. *c.* 13. *Sched.* (F).

And the officers of exciſe or cuſtoms may ſeize any candles, with the package, that ſhall be found in any veſſel, cart, or other carriage, where they ſhall have good reaſon to believe that the ſame were made in ſome private workhouſe, or clandeſtinely imported without payment of duty; or that the ſame have been exported and relanded after payment of the duty; and if the party in whoſe poſſeſſion the ſame ſhall be found ſhall not at the hearing of the information, make it appear that the duty hath been paid or ſecured, he ſhall forfeit 5 l. for every 100 lb. weight, and alſo the candles and package ſhall be forfeited. 23 *G.* 2. *c.* 21. *ſ.* 30.

And if any foreign candles ſhall be unſhipped, with intention to be laid on land, before entry and payment of the duties, or ſhall be landed again after ſhipping for exportation upon debenture; the ſame, together with the package, veſſels, boats, horſes, and other carriages, uſed in landing or conveying the ſame, ſhall be forfeited, and may be ſeized by any officers of the cuſtoms or exciſe; and the perſons from whom the ſame ſhall be ſeized ſhall forfeit 5 l. for every hundred weight. *ſ.* 31.

And if any perſon ſhall knowingly harbour or conceal any candles unlawfully imported, or relanded after ſhipping for exportation upon debenture; he ſhall, whether he claims any property therein or not, forfeit 50 l. for every hundred weight, together with the candles and package. *ſ.* 32.

And where any ſuch candles ſhall be ſeized as forfeited, and *no perſon ſhall claim the ſame* in 20 days, if it is within the limits of the chief office of exciſe in *London*, the officer who made the ſeizure may cauſe notice, ſigned by the ſolicitor of exciſe, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the ſame by the commiſſioners of exciſe; and if it is out of the ſaid limits, then publick notice ſhall be given by proclamation at the next market town on the market day next after the ſaid 20 days, of the day and place where the juſtices will proceed to trial and condemnation thereof. And the judgment thereon ſhall not be liable to any appeal, or to be removed by *certiorari*. *ſ.* 33.

But where *any perſon ſhall claim the ſame*, then all informations for the condemnation of ſuch ſeizures, or recovering ſuch penalties, (if within the limits of the chief office

Penalties by 23 G. 2. c. 21. how to be recovered.

office in *London*, shall be heard by the commissioners of excise or appeals,) elsewhere, by two neighbouring justices where the seizure was made or penalty incurred; who on complaint within three months, may summon the party accused, and the witnesses on either side, and on appearance of the offender, (or on proof of notice given to him,) may proceed to examine the facts, and witnesses upon oath, and to give judgment, as well for the penalty, as for the condemnation of such candles, and the packages, boats, cattle, and carriages so seized, and to issue their warrant for the sale thereof, and for levying any pecuniary penalty upon the goods of such offender, which may be sold if not redeemed within 14 days; and for want of sufficient distress, such offender may be imprisoned till satisfaction be made. 23 *G.* 2. *c.* 21. *s.* 37.

Appeal.

And if either party be not satisfied with the judgment of such justices, he may appeal to the next sessions, whose judgment therein shall be final; and shall not be removable by *certiorari*. *Id.*

Distribution of penalties.

And all such penalties and forfeitures shall be applied, half to the king, and half to the seizor or prosecutor, *s.* 34.

Mitigation.

Provided, that any such penalties and forfeitures may be mitigated, so as not to reduce the same to less than one fourth over and above the costs. *s.* 38.

Proof to lie on the owner.

And where candles shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. *s.* 35.

Obstructing officers.

And if any maker of candles shall obstruct any officer in the execution of the powers given to him by this or any other act for securing the duties on candles, he shall for every such offence forfeit 100*l.* 24 *G.* 3. *c.* 11. *sess.* 2. *s.* 8.

Scales and weights.

And every maker shall keep just scales and weights where he makes his candles; and shall permit and assist the officer to make use thereof, on pain of 10*l.* 8 *Ann.* *c.* 9. *s.* 11.

And by 10 *G.* 3. *c.* 44. if he shall make use of insufficient scales or weights, he shall forfeit 100*l.* But not to be prosecuted both on this and the former act. [And by 28 *G.* 3. *c.* 37. the same shall be forfeited, and may be seized by any officer of excise. *s.* 15.]

Cheating or obstructing the officer in weighing.

And if he shall in weighing his stock put any other substance therein, whereby such officer may be hindered from taking a just account of such stock; or shall forceably

obstruct,

obstruct, or by any contrivance prevent or impede such officer, he shall forfeit 100l. 26 G. 3. c. 77. s. 8.

Power of the justices.

All the fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed, half to the king and half to him that shall inform or sue. 8 *An.* c. 9. s. 28. 11 G. c. 30. s. 39. 24 G. 2. c. 40. s. 29. 25 G. 3. c. 74. s. 32, 33.

Utensils liable to the duties and penalties.

All candles, materials, and utensils for making of candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures, in the same manner as if the debtor or offender were the lawful owner. 8 *An.* c. 9. s. 19. 28 G. 3. c. 37. s. 21.

V. Coaches and coachmakers.

Coachmakers to be licensed.

By 25 G. 3. c. 49. every person who shall carry on the trade of a coachmaker, and shall build, make, construct, or sell, any coach, chaise, berlin, landau, chariot, calash with four wheels, chaise marine with four wheels, or caravan; or any calash, chaise, or chair with two wheels; or by what name soever such carriages are or may be called or known; or other carriages heretofore made subject to any duty of excise; shall take out a licence, for which he shall pay 20s. Such licence to be granted, if within the limits of the chief office in *London*, by the commissioners of excise; elsewhere, by the several collectors and supervisors of excise within their respective districts: and the same shall be renewed annually ten days at least before the end of the year. And if any person shall make, build, construct, or sell any such carriage as before mentioned, without first taking out such licence, he shall forfeit 10l. for each offence. s. 1, 2, 3.

Licences to be renewed annually.

Persons in partnership.

Provided, that persons in partnership carrying on their trade in one house or shop only, shall not be obliged to take out more than one licence in one year: But no licence shall extend further than the house or place where such person did make, build, or construct such carriages at the time of granting the same. s. 4.

Licensed persons dying.

And upon the death of any person so licensed, the executors or administrators, wife or child, of such deceased person, may carry on the trade during the residue of the term for which such licence was granted, without taking out a new licence. s. 5.

Duty on new carriages.

And every such coachmaker shall pay for every coach, berlin, landau, chariot, calash with four wheels, chaise marine,

marine, chaise with four wheels, or caravan, or by what name soever such carriages may be called, which shall be built or constructed in *Great Britain*, 1 l. And for every calash, chaise, and chair with two wheels, shall be paid in like manner 10s. 27 *G.* 3. *c.* 13. *Schedule* (F).

And such maker shall once in six weeks deliver a true account in writing, of the number and kind of such carriages which he hath made, built, constructed, and sold, and of the day on which each carriage respectively was delivered or sent out of his shop [and the name and place of abode of the person to or for whom each such carriage was delivered or sent, 38 *G.* 3. *c.* 54. *s.* 7.]; and he, or his chief workman, shall make oath to the truth of such account, and deliver the same, if in *London*, at the chief office of excise; elsewhere, to the collector or supervisor of excise of the district within which such carriage shall be made, and shall pay the duties due thereon. And in case any such coachmaker shall neglect to deliver such account, and verify the same upon oath, and pay down the duty as aforesaid, he shall for every such offence forfeit 20l. 25 *G.* 3. *c.* 49. *s.* 6, 7, 8. 27 *G.* 3. *c.* 13. *s.* 38. 38 *G.* 3. *c.* 54. *s.* 1.

Penalties how to be recovered.

All penalties and forfeitures incurred within the limits of the excise office in *London*, may be recovered before the commissioners of excise; elsewhere, the same shall be heard and determined by two neighbouring justices, who may levy the same by distress of the offender's goods, which if not redeemed within 14 days they may cause to be sold, and for want of sufficient distress, may imprison the party offending till satisfaction be made. 25 *G.* 3. *c.* 49. *s.* 9.

Appeal.

And if either party think himself aggrieved by the judgment of such justices, he may appeal to the next sessions, whose determination therein shall be final. *Id.*

VI. Coffee, tea, chocolate, and cocoa nuts.

Customs.

By 27 *G.* 3. *c.* 13. all former duties of customs and excise are repealed, and the following new duties imposed:

	£.	s.	d.
On *cocoa nuts*, per cwt. - - -	0	13	9
If secured in the king's warehouses on importation - - - -	0	1	3
And when taken thereout for home consumption - - - - -	0	12	6
On *coffee*, per cwt. - - -	1	18	6

	£.	s.	d.
If secured in the king's warehouses on importation - - - -	0	3	6
And when taken out for home consumption	1	15	0
On *tea*, for every 100l. of the value thereof, according to the price at which it shall be sold at the public sales of the *East India* Company (*Schedules* A, B.) - - -	5	0	0

And drawbacks are allowed on the exportation thereof.

Excise duty.

	£.	s.	d.	Total. £.	s.	d.
For every pound of *cocoa nuts* the growth or produce of any *British* colony or plantation in *America* for home consumption, an excise duty by 27 *G.* 3. *c.* 13. *Schedule* (F), - -	0	0	6½			
And by 35 *G.* 3. *c* 13. more	0	0	6½			
And by 35 *G.* 3. *c.* 14. more	0	0	9			
				0	1	10
For every pound of *cocoa nuts* the produce of any other place, by 27 *G.* 3. *c.* 13. *Schedule* (F),	0	1	8			
And by 35 *G.* 3. *c.* 13. more	0	1	8			
And by 37 *G.* 3. *c.* 14. more	0	2	6			
				0	5	10
For every pound of *coffee* the growth or produce of any *British* colony or plantation in *America* for home consumption, an excise duty by 27 *G.* 3. *c.* 13. *Schedule* (F), - - -	0	0	6½			
And by 35 *G.* 3. *c.* 13. more	0	0	6½			
				0	1	1
For every pound of *coffee* the produce of any other place, by 27 *G.* 3. *c.* 13. *Schedule* (F), -	0	1	8			
And by 35 *G.* 3. *c.* 13. more	0	0	6½			
				0	2	2½
On *tea*, for every 100l. of the value thereof according to the price such tea shall be sold at the publick sales of the *East India* company, an excise duty, by 27 *G.* 3. *c.* 13. *Schedule* (F), of	7	10	0			
And by 35 *G.* 3. *c.* 13. more	7	10	0			
				15	0	0

	£.	s.	d.	Total. £.	s.	d.
And also by 37 G. 3. c. 14. a further additional duty is imposed on all tea sold at the company's sales for 2s. 6d. *per* pound or upwards, of 10l. *per cent.* to be computed upon the gross price at which such tea shall be sold, to be paid by the purchaser to the said company, and by them to the commissioners of excise - -	10	0	0			
And by 38 G. 3. c. 42. 5l. *per cent.* more - -	5	0	0			
And by 39 G. 3. c. 23. 5l. *per cent.* more - -	5	0	0			
				20	0	0

And certain drawbacks are allowed on exportation thereof.

Chocolate or cocoa paste, not to be imported.

No chocolate ready made, or cocoa paste, shall be imported, on pain of forfeiting the same, and double value; and also the bags, casks, and other package. 10 G. c. 10. s. 2.

And if any person shall import any cocoa nut shells or husks, without the nuts, the officers of the customs, excise, or inland duties, may seize them, with the bags, boxes, and package, and after condemnation they shall be destroyed, or otherwise disposed of, as the respective commissioners, or three of them, shall appoint; and they may reward such officer in any sum not exceeding 20s. a hundred weight. 4 G. 2. c. 14. s. 12.

In what quantities coffee may be imported.

No *coffee* shall be imported otherwise than in cask, chest, case, bag, or other package, which shall contain 112 lb. at the least, to be stowed openly in the hold; on pain of forfeiting the same, together with the package; which may be seized by any officer of the customs or excise. 5 G. 3. c. 43. s. 34.

Officers of excise may go on board and search.

The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipped without entry and payment of duties, with the boxes, bags, and other package. 11 G. c. 30. s. 1.

Ships hovering near the coast.

By the 9 G. 2. c. 35. Where any vessel coming from foreign parts, and having six pounds or more of *tea* on board, shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and

and not proceeding on her voyage, wind and weather permitting; all such tea, with the chest and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers. *s.* 22.

And by the 5 *G.* 3. *c.* 43. Where any vessel coming from foreign parts, and having on board twenty pounds of *coffee*, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such coffee, together with the package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall be forfeited, provided such vessel doth not exceed the burden of 50 tons.

Warehouses to be provided and officers to attend.

By 35 *G.* 3. *c.* 118. The commissioners of excise shall provide, near to the respective ports, warehouses for lodging *coffee* and *cocoa nuts*. And the commissioners of customs and excise shall appoint officers to attend such warehouses. *s.* 8, 9.

Casks, &c. to be marked and warehoused.

And the officers of excise shall mark every cask, bag, or other package of coffee or cocoa nuts, on board ships importing them; and if unshipped before so marked, they shall be forfeited, and may be seized. And when so marked, the importers shall, in the presence of the officer, unship and convey the same to some warehouse so provided, and such officer shall attend. *s.* 10.

Within 14 days of being warehoused, the damaged parts to be separated, and an account to be taken.

And within 14 days of being so warehoused, the proprietor shall take the same out of the casks (*a*), and shall bring the same, and also the casks to be weighed; and shall separate the damaged parts from the merchantable parts, which shall then be re-packed into casks containing not less than 112 lb. each; and the officers shall take an account of the tare of each cask, and weight of the coffee and cocoa nuts contained therein, and such proprietor shall take the same from the scales, and the officer shall mark every such cask, and such proprietor shall remove and stow the same as such officer shall direct; on pain of forfeiting 50 l. *s.* 11.

(*a*) Under the word *casks* is to be understood also *bags*, or other *package*, without repeating those words; except otherwise expressed.

Three days allowed after notice.

Provided, that no such person shall be liable to the said penalty, unless he neglect to take such coffee or cocoa nuts out of such casks, or to bring the same to be weighed, or to remove and stow the same as aforesaid, for three days after notice from the officer. *Id.*

Samples may be be taken.

And after such coffee or cocoa nuts have been so weighed and taken an account of, the proprietor, in the presence of the officer, may take samples, not exceeding four ounces, and not more than three samples out of each cask; and if such proprietor shall take a second or third sample, he shall return those that have been previously taken, or an equal quantity in weight. *s.* 12.

Former duties to extend to coffee, &c. for home consumption.

And the duties imposed by 27 *G.* 3. *c.* 13. and 35 *G.* 3. *c.* 13. shall extend to coffee and cocoa nuts delivered for home consumption, out of any such warehouse as aforesaid. *s.* 13.

Regulations for taking coffee, &c. out of warehouses.

And when any proprietor intends to take out of such warehouse any coffee or cocoa nuts, he shall give previous notice in writing to the officer, if for home consumption one hour, if for exportation 12 hours; and shall, within one hour afterwards, bring the same to be weighed, and forthwith pay down the duty for that taken out for home consumption, according to such weight. And the

Allowance for turn of the scale.

turn of the scale shall be in favour of the crown, and in lieu thereof, and of all loss or damage whatsoever, shall be allowed 1lb. upon every 100lb. of coffee, and 2lb. upon every 100lb. of cocoa nuts. *s.* 14, 15.

When delivered for home consumption, and a permit granted.

And coffee or cocoa nuts may be delivered from any such warehouse for home consumption, on producing a certificate of the payment of the duties, and a permit for the removal thereof shall be granted. But the same shall not be delivered out, either for home consumption or exportation, in less than the entire cask, and not less than 112lb. weight. *s.* 16.

To be entered and warehoused.

The importer of any coffee, tea, or cocoa nuts, within 30 days after the master or purser shall have or ought to have made entry at the custom-house, of the burden, contents, and lading of the vessel, shall make due entry of the said coffee, tea, or cocoa nuts, with an officer of excise to be appointed by the commissioners for that purpose; and the same, on paying or securing the duties, shall be landed and put into a warehouse, to be provided at the charge of the importer, and approved of by the commissioners of the customs. 10 *G.* *c.* 10. *s.* 26. 5 *G.* 3. *c.* 43. *s.* 35.

And if any person shall import any coffee, tea, or cocoa nuts, without entry at the custom-house, and bringing the same into the warehouse; the same shall be deemed clandestinely run, and may be seized by any officer of the customs or inland duties; and the same shall be forfeited with the package, together with the horses, carts, and carriages. 10 *G. c.* 10. *s.* 27.

And if any person shall neglect or refuse to make such entry with the officer of excise as aforesaid, or to land the same as is above directed; all such coffee, tea, and cocoa nuts, shall be forfeited, together with the package wherein the same shall be contained on board such vessel, belonging to such importer so neglecting or refusing; which may be seized by any officer of excise. 5 *G.* 3. *c.* 43. *s.* 35.

Provided, that this shall not extend to any coffee or tea imported by the *East India* company. *s.* 36.

Owner and officer to have each a lock and key.

And the owner of the said goods, and the officer for the inland duties, (who shall be appointed by the commissioners of the said duties,) shall have each a lock and key; and the owner may, in presence of the said officer, and of the warehouse keeper (to be appointed by the commissioners of the customs), view, garble, and sort the said goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 *G. c.* 10. *s.* 26. 29, 30.

Taking out of the warehouse coffee and tea for home consumption.

That is to say, If the coffee or tea are intended to be taken out for home consumption, the proprietor, within the bills, shall make entry, with the receiver or collector in *London*, of so much as he intends to take out of the warehouse, and pay down the duty; and elsewhere, shall make entry at the next office, and pay the duties to the collector; and on producing a certificate signed by such collector or receiver (certifying that he has received the duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate; and shall deliver a permit to accompany such coffee or tea so delivered out, which shall also be signed by an officer attending the warehouse, to prevent the seizing thereof. 10 *G. c.* 10. *s.* 26.

Taking out of the warehouse coffee and tea for exportation

If the coffee or tea are intended to be taken out for exportation, they shall be delivered out on security given that they shall be exported, and not relanded; which security shall be discharged, on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants there, that the same were there landed, or on

proof by credible persons that they were taken by enemies or perished in the seas. 10 G. c. 10. s. 26.

But by the 18 G. 2. c. 26. No drawback shall be allowed on tea exported. s. 5. Saving, that it may be exported to *Ireland*, or the *British* plantations in *America*, without paying the inland duties before mentioned. 21 G. 2. c. 14. And by the 17 G. 3. c. 27. the whole duties on importation shall be drawn back for all teas exported to *Ireland*.

Taking out of the warehouse cocoa nuts either for home consumption or exportation.

The cocoa nuts shall not be taken out of the warehouse, but upon payment of the inland duties aforesaid; that is to say, the proprietor, within the bills, shall make entry with the collector there, of the quantity he intends to take out, and pay down the duty; and elsewhere, shall make entry at the next excise office, and pay the duty. And on producing a certificate signed by such collector, certifying that he has received the said inland duty, to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate, and shall give a permit to accompany the cocoa nuts so delivered out, which shall also be signed by the officer attending the warehouse, to prevent the seizing thereof. And the garble of all such cocoa nuts, when garbled and secured in the warehouse, shall by order of the commissioners of excise, be removed out of the warehouse by the officers attending the same, and forthwith burned or otherwise destroyed. 21 G. 3. c. 55. s. 10, 11.

Cocoa nuts and chocolate may be exported.

And the cocoa nuts for which the duty has been paid, or the chocolate made of such cocoa nuts, may be exported, on security given that they shall not be relanded. And on oath made by the exporter that the said duties have been paid, the excise officer at the port of exportation shall give a certificate of the quantity, and that the same was shipped in his presence, and that such security has been given; whereupon the collector of excise of that district shall pay back four-fifths of the said inland duty. s. 12—15.

Regulations to be observed on exportation.

And after 10th *August* 1785, Every person who hath paid all the duties for any of the said commodities, or who shall be the owner thereof, may export the same on the terms following, (viz.) giving 12 hours notice within the limits of the chief office, elsewhere 24 hours, of his intention to pack up the same, and of the time and place, to the office of excise, who shall attend and see the same packed up; and such officer shall secure the same with such seal or mark, and in such manner as the commissioners

shall

ſhall direct. And if any perſon ſhall open ſuch package, or wilfully deſtroy or deface ſuch ſeal or mark, he ſhall forfeit 20l. 27 G. 3. c. 13. ſ. 12.

And if ſuch perſon ſhall not begin to pack up ſuch goods at the time mentioned in ſuch notice, or within one hour, ſuch notice ſhall be void, and ſuch perſon ſhall be obliged to give a freſh notice. *Id.* ſ. 13.

Relanding.

Provided, that if, after the ſhipping any ſuch goods, and bond given in order to obtain a drawback of the duties, the ſaid goods or any part thereof ſhall be relanded, or put into any other veſſel, (ſhipwreck or other unavoidable accident excepted,) that then, over and above the penalty of ſuch bond, the ſaid goods, or the value thereof, ſhall be forfeited, and may be ſeized by any officer of exciſe or cuſtoms. *Id.* ſ. 15.

What quantity ſhall be taken out at a time.

And no ſeller or dealer ſhall receive out of the warehouſe, leſs than one hundred weight of each ſort at one time; except where the importation and delivering in ſhall be in leſs quantities, or where the ſame ſhall be ſold in lots or parcels leſs than a hundred weight, 10 G. c. 10. ſ. 34.

Warehouſe keeper and officer to keep an account.

And the warehouſe keeper and officer appointed by the commiſſioners of the inland duties ſhall each of them keep a book, wherein they ſhall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouſe, and the day and time when, and how much was delivered for home conſumption, and how much for exportation, and the names of thoſe for whom it was delivered out; and ſhall every ſix weeks, or oftener if required, tranſmit an account thereof in writing and on oath to the reſpective commiſſioners, with an account how much is remaining in the warehouſe: Which ſaid commiſſioners ſhall in one month appoint a perſon to inſpect the books and warehouſes, and examine the accounts; and if it ſhall appear that any was otherwiſe delivered out, or before payment of the duties on ſuch coffee and tea as were ſold for home conſumption, or giving ſecurity for what was delivered for exportation, the warehouſe keeper and officer reſpectively offending ſhall forfeit 100l. and be diſabled to hold any publick office. 10 G. c. 10. ſ. 29.

Damaged coffee or cocoa nuts.

And whereas damaged coffee and cocoa nuts have frequently been imported and ſold for ſalvage, or on other accounts, and afterwards taken by dealers into their ſtocks, whereby great frauds have been committed; therefore no damaged coffee, which cannot be ſold for 1s. 6d. a

pound, nor cocoa nuts for 1s. a pound, shall be sold on any account to be consumed in this kingdom, but shall be secured in warehouses, and not taken out till security be given for the exportation thereof. 21 G. 3. c. 55. s. 17.

Allowance to the officer for seizing.

Where any officer of excise shall have seized as forfeited any coffee, chocolate, cocoa nuts, or cocoa paste, the commissioners shall allow him one third of the clear sum that shall arise from the sale thereof after condemnation: Provided, that if at public sale the same be sold [*Note, the sense seems to require that the word* "not" ought *to have been inserted, so as that the sentence should have run,* "if at public sale the same be *not* sold"] for 1s. a pound, the same shall not in any wise be sold, but shall be burned or otherwise destroyed; and the officer shall be rewarded as the commissioners shall think fit, not exceeding 6d. for each pound so burned or destroyed. 21 G. 3. c. 55. s. 18, 19.

But no officer of the customs, or other person, shall be entitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be removed without a permit from such officer of excise, on pain of re-seizure. 12 G. c. 28. s. 6.

Who shall be a dealer in coffee, tea, and chocolate.

Every person who shall keep a public house, shop, cellar, or other warehouse, for selling of brandy or other spirituous liquors, and shall have in his custody any coffee, tea, chocolate, or cocoa nuts, above six pounds weight, shall be deemed a dealer in the said commodities. 11 G. c. 30. s. 4.

Dealer fraudulently increasing his stock.

If the officer of excise shall find any increase of the stock of any dealer, over and above what the officer found in his last survey; such increase shall be deemed to be made by a commodity for which no duty has been paid; and so much of the said stock as shall be found to be so increased shall be forfeited, and the person in whose stock the increase shall be found shall also forfeit 20l. 21 G. 3. c. 55. s. 29.

Sales of tea.

And the commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the duty shall be ascertained; and to prevent mistakes, the said officers may inspect the company's books. 18 G. 2. c. 26. s. 6.

And every person declared the best bidder at such sale, shall within three days after, deposit with the company or their clerk 40 s. for every tub and chest of tea, on pain of six times the value, and such sale shall be void, and the same shall in 14 days after be put up again. 18 *G.* 2. *c.* 26. *s.* 7. And by the 13 *G.* 3. *c.* 44. the deposit for every tub and chest of bohea tea shall be 4 l. *s.* 2.

Tea may be exported.

And by the said act of 13 *G.* 3. *c.* 44. The commissioners of the treasury may grant licence to the *East India* company to take out of the warehouse (without the same having been put up to sale), and to export to any of the *British* plantations in *America*, or to foreign parts, such quantities of tea as they shall think proper, discharged from the payment of any duties or customs whatsoever. Provided, that no such licence shall be granted, unless it be made appear to the said commissioners that there will be left remaining in the warehouses a quantity of tea not less than ten millions of pounds weight. *s.* 3, 4, 5, 6.

Limitation of quantities of tea to be removed at one time.

No tea whatever shall at any time be removed, with or without a permit, from any place not being within the limits of the bills of mortality, to any place within the said limits; and no tea, exceeding twenty pounds weight (not being in the original chest in which it was imported) shall at one time be removed, whether with or without a permit, from any place not being within the said limits to any other place out of the said limits, not being within the town, parish, or place from whence removed; on pain that the same, together with the canisters, bags, and other package, vessels and boats, horses and other cattle and carriages, shall be forfeited, and may be seized by any officer of excise: Provided, that this shall not extend to prevent any dealer from taking out two or more permits, and by virtue thereof sending two or more packages of twenty pounds each to the same person in the same day by different conveyances. 21 *G.* 3. *c.* 55. *s.* 20, 21, 22. 22 *G.* 3. *c.* 68. *s.* 21, 2, 3. 23 *G.* 3. *c.* 70. *s.* 28.

Tea seized need not be sent to London.

All tea seized any where in *England* and condemned according to law, shall be sold publicly to the best bidder, at such places as the commissioners shall think proper, without requiring such tea to be sent to *London*. 24 *G.* 3. *sess.* 2. *c.* 47. *s.* 31.

Dealer returning tea.

If any dealer, having received any tea into his stock, shall see cause to return the same, he shall give notice to the officer of excise, who shall grant a permit for returning the same; and if he shall return the same without a permit,

mit, or be guilty of any fraud relating thereto, he ſhall forfeit 100 l. 21 *G.* 3. *c.* 55. *ſ.* 24.

Officers may take ſamples.

When any dealer in tea ſhall have taken out a permit for removing tea from his own ſtock to the ſtock of any other like dealer, the officer may take a ſample (not exceeding two ounces nor leſs than one, to be ſealed by the trader in the preſence of the officer) out of each parcel ſo intended to be removed, paying for the ſame according to the price that ſuch tea is then commonly ſold for: And if ſuch dealer ſhall refuſe to permit the officer to take ſuch ſample, or ſhall deliver a ſample not being the very tea ſo to be ſent away, he ſhall forfeit 20 l. 21 *G.* 3. *c.* 55. *ſ.* 25.

Tea carried in the night.

If any tea, exceeding ſix pounds weight, ſhall be found carrying in any part of the kingdom, unleſs from *Sept.* 29 to *March* 25, between ſeven in the morning and five in the evening, and from *March* 25 to *Sept.* 29, between five in the morning and ſeven in the evening (except the ſame be carrying by a known common ſtage coach or other ſtage carriage, which uſually travel out of thoſe hours); the ſaid tea together with the package, whether with or without a permit, and all cattle and carriages made uſe of in carrying the ſame, ſhall be forfeited, and may be ſeized by any officer for the inland duties on tea. 21 *G.* 3. *c.* 55. *ſ.* 26.

Licence for retailing.

By the 15 *G.* 2. *c.* 11. No perſon ſhall be permitted to ſell or retail any coffee, chocolate, ſherbet, or tea, without licence firſt had by order of the general ſeſſions of the peace in the reſpective counties (certificate being firſt ſhewed, that he hath given good ſecurity for payment of the duties to the king), or from the chief magiſtrate of the place in whoſe juriſdiction he ſhall inhabit; and no licence ſhall be granted to any retailer, till ſuch ſecurity ſhall be given by recognizance or otherwiſe: for which licence, recognizance, and ſecurity, 12 d. ſhall be given, and no more, for the payment of the exciſe; and perſons ſelling without ſuch licence and ſecurity, ſhall forfeit 5 l. a month.

But by the 20 *G.* 3. *c.* 35. No perſon ſhall trade in or ſell any coffee, tea, or chocolate without firſt taking out a licence for that purpoſe, for which he ſhall pay 5 s.; the ſame to be granted, if within the limits of the chief office of exciſe in *London*, under the hands and ſeals of two commiſſioners, or of ſuch perſons as they ſhall appoint; elſewhere, under the hands and ſeals of the collectors and ſuper-

ſupervisors of exciſe reſpectively. Such licence to be renewed annually, ten days at leaſt before the expiration of the former. And if any perſon ſhall trade in or ſell any coffee, tea, or chocolate, without ſuch licence, he ſhall forfeit 20 l.—Provided, that perſons in partnerſhip, and carrying on ſuch buſineſs in one houſe or ſhop only, ſhall not be obliged to take out more than one licence; and that no licence ſhall impower any perſon to ſell the ſame, in any other houſe or place, than that wherein he ſhall dwell at the time of granting ſuch licence. *ſ.* 13, 14, 15, 16.

To be renewed annually.

Perſons in partnerſhip.

Every druggiſt, grocer, chandler, coffee-houſe keeper, chocolate-houſe keeper, and other perſon ſelling or dealing in coffee, tea, and cocoa nuts, or making or ſelling chocolate, either by wholeſale or retail, ſhall, before he take any of the ſaid goods into his poſſeſſion, make entry in writing of all ſtorehouſes, ſhops, rooms, and other places intended to be uſed by him, at the office for the diviſion; on pain of forfeiting 200 l. and the ſaid goods found therein, with the caniſters, bags, veſſels, and other package. 10 *G. c.* 10. *ſ.* 10.

Houſes of manufacturing and ſale to be entered.

And no entry of any ſhop, warehouſe, room, or utenſil for carrying on any trades aforeſaid, ſhall be deemed a legal entry, unleſs made in the name of the real owner of and trader in ſuch ſhop; and the perſon who acts as viſible owner of ſuch place, or principal manager in ſuch trade, ſhall be deemed the real owner and trader, and conſequently liable for any ſtock found there, or for not making entries, or other offences. 13 *G.* 2. *c.* 26. *ſ.* 8.

And none of the ſaid goods ſhall be offered to ſale but in places entered, or in a warehouſe to be approved of by the commiſſioners; on pain of forfeiting the ſame and alſo 10 l. 10 *G. c.* 10. *ſ.* 14. 12 *G.* 3. *c.* 46. *ſ.* 6.

Every druggiſt, grocer, chandler, coffee-houſe keeper, chocolate-houſe keeper, and every other perſon ſelling or dealing in coffee, tea, cocoa nuts, or chocolate, ſhall cauſe to be painted or written in large legible characters, over the door of each place, the words *dealer in coffee, tea, cocoa nuts*, or *chocolate*; on pain of 200 l. 19 *G.* 3. *c.* 69. *ſ.* 18.

Houſes to be marked.

And if any dealer in tea, coffee, cocoa nuts, or chocolate ſhall buy any of the ſaid goods, of any perſon not having the words aforeſaid painted over the door of his ſhop or other place; he ſhall forfeit 100 l.—Provided, that ſuch dealer ſhall not be ſubject to the ſaid penalty, by reaſon of any purchaſe or transfer of any tea, coffee,

or

or cocoa nuts, whilst they remain in the warehouses according to the act of 10 *G. c.* 10. nor by reason of any purchase at any sale of the *East India* company; or of the commissioners of the customs or excise; or sold for the benefit of the insurers or proprietors to defray the charges of salvage; nor by reason of any first purchase of any prize teas. *s.* 19, 20.

And if any person, other than such as have made due entry at the excise office of their several places for keeping any of the said goods, shall paint over his door the words aforesaid; he shall forfeit 50 l. over and above the penalties for selling or dealing without entry. *s.* 21.

And if any person, not being such dealer, shall buy any of the said goods (except as before excepted) not having the aforementioned words painted over his door, he shall forfeit 10 l.: And if the seller shall, within 20 days, and before any information has been lodged against him, inform against the buyer, he shall be discharged from all penalties to which he might be liable for such his own offence. *s.* 22.

Notice of bringing in.

No coffee, tea, cocoa nuts, or chocolate shall be brought into any such shop or other place, without first giving notice thereof to the officer of the division, and leaving with him a certificate signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate have been paid, or that they have been condemned as forfeited; and in case of bringing in of cocoa nuts, that they have been entered with the officers of the customs, or were condemned as forfeited: and expressing the quantity and quality, and where the duties were paid, or at what port the customs and duties were paid for the cocoa nuts, or were condemned, on pain of forfeiting the same and treble value, with the canisters, bags, and other package. 10 *G. c.* 10. *s.* 11.

Permit when sold to the retailer.

And where any of them shall be sold in the said entered places, above the weight of 6 lb. the officer shall, on request of the seller, give to the buyer a certificate signed by him, expressing the quantity, and the names of the buyer and seller, and that the duties have been paid, or that the cocoa nuts have been entered with the officers of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 *G. c.* 10. *s.* 15.

The officers ſhall be permitted at all times by day, to enter all warehouſes, ſhops, and other places, and by weighing, gaging, or otherwiſe, to take an account of the quantity and ſorts; in the weighing whereof the owner ſhall be aſſiſting, and keep juſt weights and ſcales; on pain of 100 l. and forfeiture of the ſame, which may be ſeized by any officer. 10. *G. c.* 10. *ſ.* 12. 10 *G.* 3. *c.* 44. *ſ.* 1. 28 *G.* 3. *c.* 37. *ſ.* 15.

Officers to enter and ſurvey.

Weights and ſcales.

And if, in weighing his ſtock, he put any other ſubſtance therein, whereby the officer may be hindered from taking a juſt account, or ſhall forcibly obſtruct ſuch officer; he ſhall forfeit 100 l. 26 *G.* 3. *c.* 77. *ſ.* 8.

Deceiving or obſtructing the officer.

And if any officer ſhall have cauſe to ſuſpect, that any the ſaid goods ſhall be concealed, if it is within the bills, then on oath made before two commiſſioners, or elſewhere, before one or more juſtices, ſetting forth the ground of his ſuſpicion, they may by warrant authorize ſuch officer by day or night, but if in the night then in preſence of a conſtable, to enter the place ſuſpected, and ſeize and carry away the ſame (if found) as forfeited, together with the bags, caniſters, and other package; and if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 100 l. 10 *G. c.* 10. *ſ.* 13.

Search for goods concealed.

And if any ſeller or dealer ſhall conceal any the ſaid goods, he ſhall forfeit the ſame and treble value, with the caniſters, bags, and other package; and if any perſon ſhall obſtruct the officer in ſeizing any of the ſaid goods by virtue of this or any future act, or after ſeizure ſhall endeavour to reſcue the ſame, or break or damage the veſſels or package; he ſhall forfeit 50 l. *ſ.* 39, 40.

And by the 11 *G. c.* 30. Two commiſſioners or any juſtice, on complaint by an officer on oath, that he ſuſpects any dealer not to have made true entries, ſetting forth in ſuch oath the cauſes of his ſuſpicion, may ſummon ſuch ſuſpected perſon to appear with his books, and examine him on oath touching the truth of his entry; and if he ſhall refuſe or neglect to appear, or to make ſuch oath, he ſhall forfeit 20 l. *ſ.* 12.

T. 13 *G.* 3. *Boſtock* againſt *Saunders* and others. Treſpaſs for breaking and entering his houſe. On not guilty and iſſue thereon, the cauſe was tried before the L. Ch. *J.* at the ſittings after *Hilary* term, and a verdict for the plaintiff with 100 l. damages, ſubject to the opinion of the court on the following caſe.—The plaintiff proved his declaration. The defendants in their defence produced and proved a warrant under the hands and ſeals of

two

two commissioners of excise, reciting, that the defendant *Saunders* had made oath before them, that he had cause to suspect, and did suspect, that tea was fraudulently hid and concealed in the plaintiff's house, to defraud the king of his duties, setting forth in and by the said oath the ground of his suspicion, and the same appearing to them to be a reasonable ground of suspicion, they therefore judge it reasonable, and do authorize and impower him to enter the plaintiff's house, and to seize all tea and other exciseable goods which he shall there find fraudulently concealed; and all constables and other officers are authorized and required to be aiding and assisting therein. On which was indorsed this return: "Honourable Sirs, I have searched the house of *H. Bostock*, but without success." But the defendants did not produce or prove the information stated in the warrant to have been made on oath before the commissioners. It was proved that the defendant *Saunders* was an officer of excise, and that the other defendants, who acted as his assistants, were two of them officers of excise, and one an officer of the customs. The question was, Whether upon these circumstances the plaintiff was entitled to recover? The case was argued two several terms.—By *De Grey* Ch. J. This question was very fit to be solemnly argued, because it was never yet determined. It arises on the statute of 10 *G. c.* 10. which gives the officers of excise an unlimited power of searching all entered places in the day time; but if there be cause to suspect any unentered place, then, on oath made of such suspicion, two commissioners or a justice may empower the officer to search. The officer therefore stands in a double character, as procurer, and as executor of the warrant. It is said, that the officer is justified in executing this warrant, as much as a sheriff's officer in executing those issued by the sheriff. But the law considers the excise officer as the party promoting, acting for his own interest, and not bound to obey the warrant, if, after he has received it, he finds his own suspicions ill founded. Therefore he is not like a sheriff's officer. Nor is he like a prosecutor, when a bill is found by a grand jury; because there must be some fact, and not merely a ground of suspicion found upon oath by that jury. The question therefore is, Whether the officer is not liable, if he procures and executes a warrant without good grounds of suspicion? There may be good ground of suspicion, without an actual seizure of the goods. But the suspicion must be very

well

well founded, to juſtify entering an houſe without the owner's conſent. In the preſent caſe, the commiſſioners, have no general power of inveſtigating the grounds of the information. But they are bound to act on the oath of the informer. They have no power to ſummon evidence or even the ſuſpected party. Indeed that would defeat all purpoſes of ſearching, for upon ſuch notice the goods would be ſure to be removed. This differs it from the proviſion of 11 *G. c.* 30. where the commiſſioners are to ſummon the party, on information or ſuſpicion of falſe entries, becauſe in ſuch caſe the goods are not removable. There is no occaſion to ſay, whether the commiſſioners are or are not liable for improper exerciſe of their judgment. The obliging the warrant to be directed to the informer, points out to the party injured, where his remedy certainly lies. And I think in this caſe, the plaintiff is entitled to recover.—*Gould* J. of the ſame opinion. I ſhould think, if no information could be produced, or only a frivolous one, the commiſſioners ſigning the warrant would themſelves be alſo liable to an action; but that is not the preſent caſe.—*Blackſtone* J. of the ſame opinion. I think the inſtrument ſigned by the commiſſioners is improperly called a warrant. It is rather a licence, authority, or permit; and was interpoſed by the legiſlature through a tender regard to the liberty of the ſubject. Houſes, that are entered as dealing in the exciſeable commodities, are liable to be ſearched in the day time, at the officer's diſcretion; but no other houſes are liable to be ſearched at all (nor even thoſe, in the night time) without good cauſe of ſuſpicion proved upon oath to the commiſſioners or juſtices, in whom the law repoſes a confidence that they will not wantonly authorize the officers to enter the houſes of the ſubject. But ſtill, if the ſuſpicion, though plauſible, appears to be ill founded; the officer, who, by a falſe or miſtaken ſuggeſtion, hath obtained ſuch licence from the commiſſioners, ſhall perſonally anſwer for the injury. *Black. Rep.* 912.

True manufacturing of coffee.

No perſon ſhall mix with coffee, to increaſe the weight, any butter, greaſe, water, or other materials, on pain of 100 l.; and if any dealer ſhall knowingly buy or ſell any ſo mixed, he ſhall forfeit 100 l. 11 *G. c.* 30. *ſ.* 9.

And the commiſſioners may appoint houſes and proper materials for roaſting of coffee berries, and officers to attend them, and one perſon at each houſe well ſkilled in roaſting of coffee; to which all perſons may reſort to have their coffee berries roaſted, bringing a certificate from

from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8 s. a hundred weight. 10 *G.* *c.* 10. *s.* 31.

But the sellers and dealers may, if they think proper, send their own roasters; who shall be permitted to roast the same, paying 3 s. a hundred weight. *s.* 32.

And during the continuance of such roasting houses, no coffee berries shall be roasted, burned, or dried, but in one such house; on pain of forfeiting the same, and 5 s. a pound. *s.* 33.

And if any officer or roaster shall neglect or refuse to attend such house, he shall forfeit 10 l. for the first offence, and 20 l. for the second, and be incapable to hold any office in the revenue. *s.* 34.

True manufacturing of tea.

No dealer in tea, or manufacturer, or dyer thereof, shall adulterate it, or alter, or manufacture it with any drug, or mix it with any leaf or other ingredient; on pain of forfeiting the same, and 100 l. 11 *G.* *c.* 30. *s.* 5.

And by the 4 *G.* 2. *c.* 14. If any dealer in or seller of tea, shall dye, or manufacture, any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea, or shall mix or colour such leaves of tea, with *terra japonica*, sugar, molasses, clay, logwood, or any other ingredients; or shall offer to sale, or have in his custody any such leaves in imitation of tea, or any such stained leaves of tea mixed with any ingredient; he shall forfeit for every pound weight thereof 10 l. *s.* 11.

And by the 17 *G.* 3. *c.* 29. If any person, whether he be a dealer in or seller of tea or not, shall dye or manufacture any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of any ash, elder, or other tree, shrub, or plant, in imitation of tea, or shall mix or colour any such leaves with *terra japonica*, copperas, sugar, molasses, clay, logwood, or any other ingredients, or shall sell or offer to sale, or have in his custody any such leaves dyed or manufactured, or dying or manufacturing, in imitation of tea, and shall be thereof convicted upon the oath of one witness before one justice, he shall, for every pound of such leaves so dyed or manufactured, or dying or manufacturing in imitation of tea, and for every pound of such mixed, stained, or dyed leaves of tea, forfeit 5 l.; and on non-payment thereof, such justice shall commit him to the common goal for any time not exceeding twelve months nor less

than

than ſix, or until the penalty and charges ſhall be paid. *ſ.* 1.

And if any perſon ſhall have in his cuſtody any quantity (exceeding ſix pounds weight) of ſloe leaves, or the leaves of aſh, elder, or any other tree, ſhrub, or plant, green or manufactured, and ſhall not prove, to the ſatisfaction of the juſtice before whom the matter ſhall be heard, that ſuch leaves were gathered with the conſent of the owner of the trees, ſhrubs, or plants, from which the leaves were taken, and that ſuch leaves were gathered for ſome other uſe and not for the purpoſe of manufacturing them in imitation of tea, and ſhall be convicted thereof, by the oath of one witneſs before one juſtice, he ſhall, for every pound of ſuch green or manufactured leaves ſo found in his cuſtody, forfeit the ſum of 5 l.; and on non-payment thereof, the juſtice ſhall commit him to the common gaol for any time not exceeding twelve months nor leſs than ſix, or until the penalty and charges ſhall be paid. *ſ.* 2.

And if any exciſe officer or other perſon ſhall have cauſe to ſuſpect, that any ſuch leaves dyed or manufactured, or dying or manufacturing in imitation of tea, or intended ſo to be dyed or manufactured, ſhall be concealed or lodged in any place; in ſuch caſe, on oath made before a juſtice, ſetting forth the ground of his ſuſpicion, the juſtice may, if he judge it reaſonable, by his warrant authorize ſuch officer or other perſon, by day or night, but if in the night then in the preſence of a conſtable, to enter ſuch place, and to ſeize and carry away as forfeited all ſuch leaves, together with all the waggons, carts, boxes, bags, tubs, or other veſſels, or package, containing the ſame: And the ſaid juſtice, or any other juſtice, where ſuch ſeizure ſhall be made, ſhall, on proof of the premiſes by the oath of one witneſs, by his warrant order the leaves ſo ſeized to be carried to ſome convenient place, and there to be burned or otherwiſe deſtroyed; and ſhall order the ſaid waggons, carts, boxes, bags, tubs, or other veſſels or package, containing the ſame, to be forthwith ſold, and the money ariſing by ſuch ſale, after deducting the charges of ſeizure and ſale, and of the burning or otherwiſe deſtroying the leaves, to be paid half to the informer and half to the poor: And if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 50 l. on conviction by the oath of one witneſs before one juſtice; and on non-payment, the juſtice ſhall commit him to the common gaol for any time not exceeding twelve months nor

leſs than ſix, or until the penalty and charges ſhall be paid. ſ. 3.

Provided that no ſuch green and unmanufactured leaves ſhall be burned or otherwiſe deſtroyed, if the owner thereof ſhall, within 24 hours after ſeizure, prove to the ſatisfaction of the juſtice, that the ſaid leaves were gathered with conſent of the owner of the trees, ſhrubs, or plants, and that they were gathered for ſome other uſe and not for the purpoſe of manufacturing them in imitation of tea; in which caſe the ſaid leaves, carriages, and package ſhall by order of ſuch juſtice be reſtored. ſ. 4.

And all ſuch leaves ſhall be deemed in the cuſtody of the occupier of the houſe or place where the ſame ſhall be found, and ſuch occupier ſhall be liable to all the penalties by this act inflicted on perſons having ſuch leaves in poſſeſſion, if it ſhall be proved to the ſatisfaction of the juſtice that ſuch leaves were lodged there with the privity or conſent of the ſaid occupier. ſ. 5.

The ſaid forfeitures ſhall be diſtributed one half to the informer, and the other half to the poor of the pariſh or place where the offence ſhall be committed; in which caſe, nevertheleſs, an inhabitant may be a witneſs, notwithſtanding his being intereſted. ſ. 6, 7.

The conviction ſhall be written on parchment or paper in this or the like form: *Be it remembered, that on the —— day of —— in the —— year —— A. O. was upon complaint of* A. I. *convicted before me one of the juſtices of the peace for —— in purſuance of an act paſſed in the ſeventeenth year of the reign of his majeſty king* George *the third, for* [Here ſet forth the offence]. *Given under my hand and ſeal the day and year abovewritten:* And ſhall be certified by the juſtice to the next ſeſſions; and ſhall not be quaſhed for want of form, nor removed by *certiorari* into his majeſty's court of king's bench ſ. 9.

True manufacturing and ſtamping of chocolate.

The maker of chocolate, if within the bills, ſhall weekly, and elſewhere every ſix weeks, make entry in writing at the next office, of all chocolate made by him within that time, ſetting forth the weight thereof, on pain of 50l. Which entry ſhall be upon oath of the maker or his chief workman, according to the beſt of his knowledge and belief, to be adminiſtered within the bills by ſuch officers as the commiſſioners ſhall appoint, and elſewhere by the collectors and ſupervifors. But no perſon ſhall be obliged to go further to make entry, than the next market town. 10 G. c. 10. ſ. 17.

And he shall in one week within the bills, and elsewhere in six weeks after entry, clear off the duties, on pain of 50 l. besides the duty; and he shall after default in payment, sell or deliver none out till the duty is paid, on pain of treble value. 10 *G. c.* 10. *s.* 18.

And he shall at the time and place of entry produce the same so made (on pain of 20 s. for every pound not produced); which chocolate shall be tied up with thread in papers of one pound, half a pound, or a quarter of a pound each, and not more or less; which shall be marked or stamped by the officers. 32 *G.* 2. *c.* 10. *s.* 16.

And if any person shall sell chocolate in any less quantity than a quarter of a pound; or shall sell and deliver any chocolate not being duly marked or stamped; or not inclosed and tied up with the identical piece of thread directed to be used in tying up the same before it was stamped; or shall sell and deliver any chocolate, whereof the thread and stamped label inclosing the same shall have been broken or opened; he shall forfeit 20 l. *s.* 17.

And if any person shall counterfeit the said stamp, or shall knowingly sell any chocolate with a counterfeit stamp; or shall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the stamp on; he shall forfeit 500 l. and be committed to the next county goal for twelve months. 10 *G. c.* 10. *s.* 22. 11 *G. c.* 30. *s.* 13.

And if any stamped chocolate shall be damaged, the owner may in presence of an officer open it, and deliver the stamps to the officer, and work it over again with fresh cocoa nuts, and have it restamped, paying duty for what is added. 11 *G. c.* 30. *s.* 14.

But on reworking chocolate, proof shall be made (before the commissioners within the bills, and before two justices elsewhere) that the duties for the cocoa nuts whereof it was made, and for those also which are added, have been paid, and the chocolate entered. *s.* 15.

Chocolate made for private families.

If any person shall be minded to make chocolate for his own family, and not for sale, and shall give notice thereof under his hand to the officer of the division, three days before he begins to make, in which notice shall be specified the quantity of cocoa nuts designed to be made into chocolate, the name of the person to be employed in the making, and the place where; in such case the officer shall give a permission under his hand for making the same, and the place shall not be liable in respect thereof to be surveyed. 10 *G. c.* 10. *s.* 23.

And the perſon for whom it is made, ſhall in three days after finiſhing make entry on oath with the officer, of the whole quantity then made by virtue of ſuch permit, and bring the ſame wrapt up as before, to have it ſtamped, and ſhall pay the duty; and in default thereof, ſhall forfeit the ſame, and treble value. *ſ.* 24.

And no perſon ſhall be permitted to make into chocolate for his own private uſe, leſs than half a hundred weight of cocoa nuts at a time. *ſ.* 25.

Penalty of retailing tea without a permit, or pedlars with one.

And if any perſon ſhall offer any tea to ſale, not having a permit; or if any pedlar, or other trading perſon, going from town to town, or other men's houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch tea to ſale, although he have a permit; the perſon to whom it is offered to ſale, may ſeize and detain the ſame, and carry it to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice of the peace to be by him committed to priſon, and proſecuted for the penalties incurred for ſuch offence; and ſuch tea may be proſecuted in the name of the perſon who ſtopped or ſeized the ſame, in like manner as if it had been ſeized by an officer. 9 *G.* 2. *c.* 35. *ſ.* 20.

Permit on removal.

And none of the ſaid goods above ſix pounds weight ſhall be removed or carried from one part of the kingdom to another, without a permit ſigned by an officer, ſignifying the names and places of abode of the buyer and ſeller, and the quantity and ſpecies of the goods, and that the duty hath been paid, or the cocoa nuts entered as aforeſaid, or that they have been condemned as forfeited; on pain of forfeiting the ſame, together with the caniſters, bags, or other package: Which permit ſhall be left with the officer of the diviſion to which the ſame ſhall be carried, to prevent the ſeizure thereof; in which permit ſhall be expreſſed the time for which it ſhall continue in force. 10 *G. c.* 10. *ſ.* 16.

And if any perſon ſhall take out a permit for removing coffee, tea, or cocoa nuts, and ſhall not ſend away the goods within the time limited, nor return the permit, he ſhall forfeit treble value; and if there ſhall not appear a ſufficient decreaſe made in the ſtock to anſwer the quantity in the permit, the officer may ſeize ſo much of the ſaid ſtock as forfeited, as will anſwer the ſaid quantity in the permit: But no perſon ſhall receive a permit, without the direction in writing of the perſon (or his ſervant) from whoſe ſtock the goods are to be removed; on pain of 50*l.*

And

And in default of payment, he shall be imprisoned three months. 11 *G. c.* 30. *s.* 10.

And for the better distinguishing the species of the tea to be contained in the said permit, all dealers in and sellers of tea, who shall receive into their custody any *Bohea*, *Congo*, *Souchong*, or *Pekoe* tea, shall mark every canister, bag, jar, tub, box, cask, or other package containing the same, with the word BLACK; and shall mark every canister, bag, or other package in which they shall keep any other kind of tea, not being *Bohea*, *Congo*, *Souchong*, or *Pekoe* tea, with the word GREEN. And for avoiding all doubts concerning the said two kinds of tea distinguished by the names of *Black tea* and *Green tea*, it is hereby declared, that by the term *Black tea* is meant all such teas as are usually known by the name of *Bohea*, *Congo*, *Souchong*, or *Pekoe* tea; and that by the term *Green tea* is meant all teas not being such *Bohea*, *Congo*, *Souchong*, or *Pekoe* tea. And the permit granted by such officer shall distinguish the same accordingly. 12 *G.* 3. *c.* 46. *s.* 1, 2. 5. Dealers to mark their canisters, &c.

And the officer of excise who shall survey and take account of the stock of tea at the warehouses, storehouses, shops, cellars, or other places, of persons being dealers in and sellers of tea, shall keep a separate and distinct account of the *Black* tea and *Green* tea; and if he shall find any increase either of *Black* tea or *Green* tea in custody of any such dealer or seller, the same shall be taken to be made by tea for which no duty hath been paid, and privately brought in without a permit: And so much of either of the said sorts as shall be found to be so increased shall be forfeited, and seized by the officer, unless the owner shall make it appear that the increase was made by tea brought in with a permit or certificate of the payment of the duties thereof. *Id. s.* 3. Increase since the last survey.

All sellers and dealers in any of the said goods, and all makers of chocolate, and coffee or chocolate-house keepers, who shall consume the same in small quantities under six pounds, shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them under six pounds; and shall keep another book wherein they shall enter each parcel above six pounds, which they shall sell in each day, which shall not be removed without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and where it is to be carried, and Account to be kept of small quantities consumed.

that the duties were paid, or the cocoa nuts entered, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers; and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said book shall from time to time lie open, and be perused by the officer: And if such seller or dealer shall omit his duty in regard to the said books, he shall forfeit 100 l. 10 G. c. 10. s. 35.

(But by the 12 G. c. 28. No dealer in cocoa nuts shall dispose of less than 28 pounds at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer; on pain of 20 l. for each pound of cocoa nuts otherwise disposed of, and of 20 l. for default about the entry. s. 29.)

And such dealers in and sellers of tea shall in their accounts and books to be kept as aforesaid, distinguish particularly the respective quantities of each of the said sorts of Black tea and Green tea by them consumed, retailed, or sold on each day; on the like pain of 100 l. as aforesaid. 12 G. 3. c. 46. s. 4.

Dealers concealing coffee, &c.

And if any such dealer in coffee, tea, or cocoa nuts, or maker or seller of chocolate, shall conceal the same from the view of the officer, with intent to defraud his majesty, he shall forfeit the same, and treble the value thereof, and also all canisters and package containing the same. 10 G. c. 10. s. 39.

Obstructing officers, or rescuing coffee, &c.

And if any person shall assault or hinder any officer of the customs, or inland duties, in seizing or securing any coffee, tea, cocoa nuts, or chocolate; or shall by force rescue the same after seizure, or attempt so to do; or shall break or damage any vessel or package containing the same, he shall forfeit 50 l. s. 40.

And if any person shall obstruct any officer in the execution of his duty, or shall rescue any coffee or cocoa nuts which have been seized, or attempt so to do, where no penalty is particularly provided; he shall forfeit 100 l. 35 G. 3. c. 118. s. 22.

Power of the justices.

All the said penalties and forfeitures (except where herein otherwise directed) shall be recovered and mitigated as by the laws of excise or in the courts at *Westminster*; and be employed half to the use of the king, and half to the informer. 10 G. c. 10. s. 41. 11 G. c. 30. s. 39. 4 G. 2. c. 14. s. 10. 18 G. 2. c. 26. s. 14. 24 G. 2. c. 40. s. 33.

And

And by the 12 *G.* *c.* 28. the penalties on the said act shall be recovered as by the laws of the customs or excise respectively. *s.* 33.

And by 35 *G.* 3. *c.* 118. all the penalties by this act imposed, and sued for by the officers of the customs, shall be recovered as by the laws of customs. And all penalties which shall be sued for by the officers of excise, may be sued for, levied, and mitigated, as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him who shall sue. *s.* 23, 24.

Proof to lie on the claimer.

And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. 10 *G.* *c.* 10. *s* 28.

Condemnation and sale.

The commissioners shall cause all tea and coffee seized in *London*, and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London*. 12 *G.* *c.* 28. *s.* 1. Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper. *s.* 16.

But if they think fit, they may cause such tea as cannot be sold for 5 s. a pound, to be burnt or otherwise destroyed; and the person making seizure, to be rewarded as they shall think proper, not exceeding 1 s. 6 d. for each pound of such tea. *s.* 3.

Utensils liable.

All stock and utensils found in the shops or other places aforesaid, shall be liable to the duties and forfeitures. 18 *G.* 2. *c.* 26. *s.* 8.

VII. Glass.

Importation.

No glass shall be imported into *Ireland*, other than the manufacture of *Great Britain*; on pain of forfeiting the same, and the ship, and 10 s. a pound. 19 *G.* 2. *c.* 12. *s.* 23.

By the 27 *G.* 3. *c.* 13. certain duties are laid upon glass imported, in lieu of the former duties repealed.

And by 27 *G.* 3. *c* 28. *s.* 1, 2. additional duties are laid upon glass imported; and by 34 *G.* 3. *c.* 27. *s.* 1. further additional duties are imposed on glass imported; which are to be under the management of the commissioners of excise and customs.

And if any foreign glass shall be landed or unshipped with intent to be put on shore, before entry and payment of the duties, or without a warrant from the proper officer; the same shall be forfeited, or the value thereof, and

may be seized or recovered of the importer or proprietor, by any officer of the customs or excise; and moreover the master or other person having command of the vessel, and every other person concerned in such landing or unshipping, shall forfeit 100 l. 17 G. 3. c. 39. s. 25.

And by 38 G. 3. c. 33. To prevent the fraudulent importation of glass. Every package containing any plate or plates of glass unframed, being *plate*, *crown*, or *sheet* glass, which shall be imported, or which shall be brought into this kingdom for the purpose of exportation, shall be marked on the outside thereof in Roman letters four inches long at least, with the word GLASS; on pain of forfeiture thereof, together with the package, and all goods or merchandize contained therein. s. 6.

And the master of every vessel in which any such glass shall be imported, shall, in the report of his ship's cargo, express every such package of glass; on pain of forfeiting the same, and also 100 l. s. 7.

And no such glass shall be imported in any package, which shall not contain 500 weight, on forfeiture thereof: Provided that this act shall not extend to forfeit any plate of glass 60 inches in length or upwards, on account of the package not being marked as aforesaid. s. 8.

Home duty. By 27 G. 3. c. 13. For every hundred weight of materials or metal or other preparations whatsoever, by what name soever called, that shall be made use of in *Great Britain*, for the making of *plate or flint glass*, or *enamel*, *stained*, or *paste glass*, or *phial glass*, shall be paid by the maker thereof - - £. 1 1 5½

And by 34 G. 3. c. 27. s. 1. an additional duty of - - 0 10 8¼

1 12 2¼

And for every hundred weight of materials made use of in making *spread window glass*, commonly called *broad glass* - - - - 0 8 0

And for every hundred weight of materials made use of for making of all other *window glass* (not being spread glass) whether flashed, or otherwise manufactured, commonly called *crown glass*, or *German sheet glass* - - - - 0 16 1¼

And by 34 G. 3. c. 27. s. 1. an additional duty of - - 0 8 0¼

1 4 2

And

And for every hundred weight of materials made use of in making *common bottles* (not being phials) and of vessels made use of in *chemical laboratories*, and of *garden glasses*, and of all other vessels or utensils made of common bottle metal - £. 0 4 0¼

And by 27 G. 3. c. 28. In lieu of the duty of excise then charged on materials, or metals, or other preparations made use of in making of *cast plate glass*, there shall be paid 1 l. 1 s. 5½ d. *per* hundred weight for all cast plate glass made in *Great Britain*, and which shall be squared into plates of a superficies not less than 1485 inches, and of a thickness as follows, (*viz.*)

Ten twentieth parts of an inch at least if the superficial contents be 6147 square inches and upwards.

Nine twentieth parts if under	6147	and not less than	5215	square inches.
Eight ditto	5215	ditto	4282	ditto
Seven ditto	4282	ditto	3350	ditto
Six ditto	3350	ditto	2417	ditto
Five ditto	2417	ditto	1485	do. *s.* 5, 6.

And certain drawbacks are allowed on the exportation thereof.

Glass-makers to be licensed.

And every *glass-maker* shall take out a licence, for which he shall pay 10 l. and shall renew the same annually, ten days at least before the end of the year, on the penalty of 50 l. 24 G. 3. c. 41. *sess.* 2. *s.* 1. 7.

Place of making to be entered.

And every maker of glass shall, (by 35 G. 3. c. 114. after 5th *July* 1795(*a*),) before he begins to make any glass, or mix or prepare any materials, make entry in writing at the next excise office, of all workhouses, furnaces, pots, pot chambers, annealing arches, warehouses, rooms, and other places, by him intended to be used for the making or keeping of glass, or pots, or materials mixed and prepared for making of glass; on pain of forfeiting 200 l. 19 G. 2. c. 12. *s.* 10. 17 G. 3. c. 39. *s.* 27. 35 G. 3. c. 114. *s.* 1.

Officers may enter and survey, and mark pots.

And the officers of excise by day or night, upon request, may enter into every workhouse, warehouse, or

(*a*) This act shall remain in force for two years from 5th *July* 1795. And by 37 G. 3. c. 99. *s.* 4. it is continued for one year. And by 39 G. 3. c. 38. is further continued till 5th *July* 1800.

other

other place, entered or made use of by any maker, and examine and take an account of the materials there mixed and prepared for the making of glass, either before or after the same is put into the pots, and of all glass there made or making; and also may take an account of the contents of each pot, and shall mark and number every such pot as he shall think fit; and if any person shall counterfeit or alter any such mark, or connive at the same being done; he shall forfeit 500l. And if any person shall wilfully deface or obliterate any such mark, or cause, or connive at the same being done, he shall forfeit 200l. 35 G. 3. c. 114. s. 2.

And the officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glass; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glass maker; and if he shall not leave such copy on demand, he shall forfeit 40s. 19 G. 2. c. 12. s. 13.

Notice of beginning to work.

And every maker shall, four hours before he begin, give to the officer under whose survey he is, notice in writing of his intention so to do, specifying therein every pot set in such annealing arch, with the number marked by the officer on such pot, on pain of forfeiting 20l. s. 3.

And he shall, before he begin to fill any pot, give 12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glass to be made; on pain of 50l. And if the filling be not begun pursuant to such notice, the said notice shall be void. 19 G. 2. c. 12. s. 11, 12. 17 G. 3. c. 39. s. 33.

And if, after notice given, and a gage taken by the officer, he shall put into any pot any material or preparation, he shall forfeit 50l. 17 G. 3. c. 39. s. 33.

No pot to be filled till gaged.

And no maker shall, after any pot has been set in the furnace, begin to fill the same with metal or preparation for the making of glass, until the officer shall have previously examined and gaged such pot, after the same has been set up in the furnace as aforesaid; on pain of forfeiting 50l. 35 G. 3. c. 114. s. 4.

Fire not to be stirred, &c. to obstruct the officer.

And that the officer may be enabled without inconvenience, to ascertain whether, after notice given, and a gage taken, and without fresh notice in writing, any metal, materials, or preparation has been put into any pot; no maker shall, during a quarter of an hour after the officer

ſhall have entered the glaſs houſe, and ſhall have forbidden the ſame, ſtir or break up the fire, or add freſh coals or fuel thereto, in any furnace or annealing arch; or wilfully raiſe any ſmoak, or other noiſome or offenſive vapour, whereby the officer may be hindered or obſtructed in gaging or examining any pot, or in examining the materials in ſuch pot, or in gaging or aſcertaining the quantity of ſuch materials, or in examining or counting the veſſels, utenſils, or wares in any annealing arch; on the penalty of 100l. *ſ.* 5.

Officers may unſtop pots to gage materials.

And the officer may at all times unſtop or take down any ſtopper from any pot, for the purpoſe of examining, gaging, or taking an account of the materials in ſuch pot. *ſ.* 6.

Makers of common glaſs bottles, &c. in diſtinct houſes, to give a declaration thereof.

And whereas it is expedient to charge the duty on materials for making common glaſs bottles, upon ſuch makers of glaſs as ſhall be deſirous thereof, according to the weight of the bottles, in lieu of aſcertaining the weight of ſuch materials according to the gage thereof taken in the pots: it is enacted, that if any maker of *common glaſs bottles* ſhall be deſirous of making common bottles or other veſſels or utenſils of *common bottle metal only*, in any diſtinct and ſeparate glaſs houſe and building, and ſhall deliver to the ſurveyor or ſupervifor of the diviſion where ſuch glaſs houſe is ſituate, a declaration in writing of his being deſirous to be charged with and pay the ſaid duty according to the weight of the bottles (*a*); and ſhall ſpecify the particular glaſs houſe and building in which he is deſirous of making the ſame; in ſuch caſe, the officer ſhall not charge the duty from any gage taken by him in any pot of materials or preparations made uſe of by ſuch maker; any thing in any act of parliament contained to the contrary notwithſtanding. *ſ.* 7.

Declarations to remain in force for ſix months at leaſt.

Provided always, that ſuch declaration ſhall be in force for ſix months at leaſt, from the time of the delivery thereof, and from thenceforth until the ſame be revoked or withdrawn by a note in writing, delivered by ſuch maker to the ſurveyor or ſupervifor of the diſtrict. *Id.*

Annealing arches to be made of a certain form, and to be numbered.

And every ſuch maker, having delivered ſuch declaration as aforeſaid, ſhall build and conſtruct every annealing arch or oven intended to be uſed for the annealing of com-

(*a*) Under the word *bottles* is to be underſtood alſo all other *veſſels* or *utenſils* made of *common bottle metal*, unleſs otherwiſe expreſſed.

mon glass bottles, in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance, and shall number the same progressively with a durable mark; on pain of forfeiting 100 l. *s.* 8.

Iron gratings to be fixed.

And every such maker shall, at his own expence, provide and affix a sufficient iron grating to the mouth of his annealing arch and oven, to be approved of in writing under the hand of the surveyor or supervisor: and proper locks and keys and all other necessary fastenings, for securing and sealing such annealing arch and oven, and the mouth and iron grating thereof, shall be provided by the surveyor and supervisor, at the expence of such maker; and every annealing arch or oven, and the mouth and iron grating thereof, shall be securely locked, fastened, and sealed by the officer, at all times except when such maker shall be at work, or shall be opened by the proper officer, in pursuance of such previous notice as is hereinafter directed: And if any such maker shall neglect or refuse at his own expence to provide such iron grating, or to affix the same in manner aforesaid; or to pay for any lock, key, or other necessary fastening provided by such surveyor or supervisor; or if any person shall obstruct or hinder any officer or person by him employed in fixing such fastening; or in the locking, sealing, or securing any such annealing arch or oven, or the mouth or iron grating thereof, or fastening as aforesaid; or by any means or contrivance whatsoever, shall open any such lock, or annealing arch or oven, or the mouth or iron grating thereof, before the same shall have been unlocked and opened by the officer; or shall wilfully break or damage any such lock, seal, or fastening, he shall, for every such offence, forfeit 200 l. *s.* 9.

Locks, &c. to be provided by the officer, at the expence of the maker.

Annealing arches to be locked, except at certain times.

Penalty on obstructing officers, or opening such locks.

Annealing arch not to remain open more than 24 hours, except for repairs.

Provided always, that no such annealing arch or oven shall remain unlocked or open, for any purpose or on any pretence whatever, (except for repairing when empty,) for more than 24 hours, from the time when opened by the officer, who may, at the end of such 24 hours, lock, fasten, and seal such annealing arch and oven, and the mouth and iron grating thereof. *Id.*

Locks, &c. to be altered and repaired, when required by the officer.

And where locks, keys, or fastenings shall be provided in pursuance of this act, every such maker to whom the same shall belong, shall, when required by the surveyor or supervisor, immediately alter, repair, and amend the same according to such requisition; on pain of forfeiting 100 l. *s.* 10.

And

And when any ſuch maker ſhall be deſirous to light any fire to heat his annealing arch or oven, he ſhall give to the officer 12 hours notice in writing, and ſuch officer ſhall attend at the time, and unlock and open ſuch annealing arch or oven, and the mouth and iron grating thereof; and if ſuch maker ſhall neglect or refuſe to light ſuch fire within one hour, ſuch notice ſhall be void, and ſuch officer ſhall again lock up the ſame, and ſuch maker ſhall give a like and freſh notice before the ſame ſhall be again opened. *ſ.* 11.

Makers to give 12 hours notice of their intention to heat annealing arches.

Officers to attend and unlock them.

Fire to be lighted within an hour.

And every ſuch maker ſhall, when any ſuch common glaſs bottles are blown or made, remove the ſame directly into ſuch annealing arch or oven, and ſhall there depoſit the ſame in ſuch manner as ſuch officer ſhall approve, and ſo that the ſame may the moſt eaſily and ſecurely be viewed and examined, and the number and kinds thereof aſcertained in each annealing arch or oven; and no ſuch maker ſhall at one time put or keep in any ſuch annealing arch or oven, any common bottles of different makings, or fillings of the pots; nor put or keep any other ſort or ſpecies of glaſs or glaſs wares whatever or any phials, in any ſuch annealing arch or oven, entered or made uſe of for the annealing of common bottles; on pain of forfeiting 50 l. *ſ.* 12.

Bottles when blown to be removed into the annealing arch.

Bottles of different makings not to be put therein at the ſame time, nor any other ſort of glaſs.

And every ſuch maker, having begun to work any common bottle metal from out of any pot, ſhall, without any unneceſſary delay or interruption, continue to work out all the pots then charged, and ſhall finiſh the working out thereof within 16 hours after he began; and as ſoon as ſuch metal ſhall be ſo worked out as aforeſaid, and the bottles put into the annealing arch or oven; ſuch maker ſhall, in the preſence of the officer, again charge every ſuch pot with freſh materials or preparations, (other than cullet or broken glaſs,) not leſs than 50 lb. weight; and ſhall alſo deliver to ſuch officer a declaration in writing, ſpecifying the true number of bottles, and whether the ſame are reputed quart or pint bottles, or bottles of any other, and what reputed meaſure, and the number and kinds of any other veſſels or utenſils of common bottle metal contained in every ſuch annealing arch; on pain of forfeiting 100 l. *ſ.* 13.

The whole metal intended to be manufactured, to be worked within 16 hours.

And the pots to be again charged.

A declaration of the number of bottles to be delivered.

Penalty.

Provided that no ſuch maker ſhall be liable to the ſaid penalty by reaſon of his not delivering a true declaration as aforeſaid, if the ſame ſhall not differ from the number of bottles, veſſels or utenſils in any ſuch annealing arch, in a greater proportion than 5 in 100. *Id.*

Exception.

And

Beginning to work, deemed beginning to work the whole then charged.

And every such maker, who shall have begun to work, shall be deemed to have begun to work out the common bottle metal out of every pot at that time charged with materials for making common bottles within the same glass house or building. *s.* 14.

Scales and weights.

And every such maker shall keep sufficient scales and weights at the place where he shall manufacture such bottles, and shall, at his own expence, affix a proper hook or staple in a proper place, to be approved of under the hands of the surveyors or supervisors of the division, and shall suffer any officer to use the same; on pain of forfeiting 50 l. *s.* 15.

Using false weights, or deceiving the officer.

And if any maker of glass shall, in weighing any such common glass bottles, make use of any false, unjust, or insufficient scales or weights, or shall practise any art or contrivance by which such officer may be hindered from taking a true weight; he shall forfeit 100 l. and also such scales and weights, which may be seized by any officer. *Id.*

Twelve hours notice to be given of taking bottles out of the annealing arch.

And every such maker, being desirous to take any glass bottles out of any annealing arch or oven, shall, 12 hours before he begin, give to the officer notice in writing of his intention, specifying each particular arch or oven, and the number thereof, out of which it is intended to take such bottles, and the hour when he intends to begin; and such officer shall attend at the time mentioned in such notice, and shall unlock and open such annealing arch and oven, and attend to see such bottles taken out; and such maker shall immediately, on such officer's attendance, begin and continue without any unnecessary delay, to take out the whole of the bottles within four hours from the time of beginning; and such maker shall immediately proceed to weigh the same, in the presence of such officer, and shall pay the duty according to such weight: on pain of forfeiting 100 l. And if any such maker, having given such notice, shall not immediately begin, when such annealing arch or oven is so opened, such notice shall be void, and such officer shall immediately again lock up and seal the same in manner aforesaid, and such maker shall be obliged to give a fresh notice. *s.* 16.

Officers to attend.

The whole to be taken out within four hours, and to be weighed.

If such makers do not immediately begin, fresh notice to be given.

Within what hours such notice shall be given.

Provided, that no such maker shall be at liberty to give any such notice except in the day time, and between eight in the morning and six in the afternoon, and every other notice shall be void. *Id.*

Allowance for the turn of the scale.

Provided also, that in weighing common glass bottles, the turn of the scale shall be in favour of the crown, and

in

in lieu thereof there ſhall be allowed to ſuch maker 1 lb. upon every 100 lb. *ſ.* 17.

Makers to aſſiſt.

And every ſuch maker ſhall aſſiſt, to the utmoſt of his power, with a ſufficient number of his workmen, ſuch officer in weighing and taking an account; on pain of forfeiting 50 l. *ſ.* 18.

Allowance by 17 G. 3. repealed.

And the allowance made by 17 *G.* 3. *c.* 39. of $\frac{1}{5}$ part of the metal or other materials contained in pots for making common bottles, is repealed. *ſ.* 19.

Bottles not to be removed till weighed.

And if any ſuch maker ſhall convey away any common glaſs bottles from any annealing arch or oven, before the ſame be weighed; and ſhall neglect or refuſe to produce the ſame to ſuch officer to be weighed; he ſhall forfeit 100 l. *ſ.* 20.

Bottles weighed and unweighed to be kept ſeparate.

And every ſuch maker ſhall keep all common glaſs bottles, which have not been weighed, ſeparate from thoſe that have been weighed, and from all other glaſs wares whatſoever; on pain of forfeiting 50 l. *ſ.* 21.

Uſing private annealing arches, or concealing bottles unweighed.

And if any ſuch maker ſhall make uſe of any private or concealed annealing arch, oven, utenſil, or place, other than thoſe entered: or ſhall fraudulently remove or convey away any common glaſs bottles before the ſame have been weighed; or hide or conceal the ſame; he ſhall forfeit 500 l. *ſ.* 22.

No phials, &c. to be made in places entered for making common glaſs bottles.

And no ſuch maker ſhall make within the ſame glaſs houſe entered or uſed for making common glaſs bottles, or in any building thereto adjoining, any phials, or other ſort of glaſs ware, except common bottles and other veſſels and utenſils of common bottle metal, which veſſels and utenſils ſhall be ſuch only as were immediately before the paſſing of this act, uſually made of common bottle metal; on pain of forfeiting 200 l. *ſ.* 23.

Upon ſuſpicion that bottles have been removed before weighed, officers, by warrant may ſearch ſuſpected places.

And if any officer ſhall ſuſpect, that any common glaſs bottles have been fraudulently conveyed away before the ſame were weighed, and are depoſited, hid, or concealed in any place whatſoever, if within the limits of the chief office in *London*, upon oath made by ſuch officer before two commiſſioners, elſewhere before one juſtice, ſetting forth the ground of his ſuſpicion, ſuch commiſſioners or juſtice may, by warrant, empower ſuch officer, by day or night, (but if in the night in the preſence of a conſtable,) to enter ſuch ſuſpected place, and to ſeize and carry away all ſuch common glaſs bottles, or other ſuch veſſels there found, as forfeited. And if any perſon ſhall obſtruct ſuch officer, or perſon acting in his aid, in the execution of ſuch warrant; he ſhall forfeit 200 l. *ſ.* 24.

Obſtructing ſuch officers.

And

Obstructing officers in their duty.

And if any person shall obstruct any officer in the execution of any powers given to him, by this or any other act relating to glass; he shall (except where other penalties are herein imposed) forfeit 200 l. *s.* 25.

Officers may gage materials and take samples.

Provided, that nothing herein contained shall extend to make it unlawful for any officer at all times to inspect, examine, gage, or otherwise take an account of the materials mixed and prepared for the making of glass in any glass house, as well before the same shall be put into any pot, as after; or to take samples, not exceeding four ounces in the whole out of each pot or other vessel, containing such preparation. *s.* 26.

And the gauger or other officer may take samples not exceeding four ounces in the whole out of each pot, paying for the same (if demanded) one halfpenny for each ounce: And if any person shall obstruct the officer in taking samples, he shall forfeit 50 l. 17 *G.* 3. *c.* 39. *s.* 34.

Entry of glass made.

Every maker within the bills shall monthly, and elsewhere, once in six weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 20 l. which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. 19 *G.* 2. *c.* 12. *s.* 17.

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making such entries. *s.* 18.

Payment of the duty.

The maker, within the bills, shall in four weeks, and elsewhere in six weeks after entry, pay off the duties, on pain of double duty (O). *s.* 19

Allowance for glass spoiled in making, and for waste.

If any pot filled with materials shall crack or break, whereby any part thereof shall become unfit for service, on proof thereof to the commissioners where such glass house shall be situated, they shall make an allowance for the same. *s.* 15.

And in recompence of waste necessarily happening in manufacturing the materials, and for metal left at the bottom of the pot which cannot conveniently be wrought out; in all pots containing more than one hundred weight, used for preparing materials for making of *flint*, *enamel*, *stained glass*, and of all *phial glass*, an allowance shall be made to the maker of one-fourth part of the materials contained therein, and of one inch deep at the bottom of the pot; —— in small pots, commonly called *Pile ends*, not containing one hundred weight, an allowance shall be made of one-fifth only of the materials; ——

in pots used for making of *crown* and *plate glass*, and of all *window glass*, whether flashed or spread, or otherwise manufactured, an allowance shall be made of one-fourth of the materials, and of four inches deep at the bottom.

Working up bottoms.

And if the maker shall be desirous to work up any of the bottoms for which an allowance hath been made of three inches or of four inches at the bottom as aforesaid, he shall give six hours notice thereof in writing to the officer of excise; in which case he shall be charged with a duty for the same of 18 s. 8 d. a hundred weight, and shall have an allowance of one inch and no more at the bottom of the pot. And if he shall work any part thereof without giving such notice, he shall forfeit 50 l. 17 *G.* 3. *c.* 39. *s.* 31, 2.

Notice to be given of squaring cast-plate glass.

And every maker of *cast plate glass*, before he begin to draw the same out of his annealing arch, shall give to the officer six hours previous notice thereof in writing if within the bills, (elsewhere twelve hours,) and such officer shall attend and see such cast plate glass drawn out of the annealing arch; and such maker shall immediately, in the presence of such officer, proceed to square the same; and such cast-plate glass with the cullett arising from the squaring thereof, shall be weighed in the presence of such officer; and in default thereof, every such maker shall forfeit 50 l. And if such maker shall not begin within one hour of the time mentioned in such notice, the same shall be void. 27 *G.* 3. *c.* 28. *s.* 7.

Not to be removed before the duty is charged.

And no maker shall remove from the glass-house in which the same shall have been made, any cast-plate glass, until the duty shall have been charged; on pain of 50 l. and the same shall be forfeited, together with the package containing the same, and may be seized by any officer. 27 *G.* 3. *c.* 28. *s.* 11.

An account to be kept of waste of materials for making glass.

And every maker of any *plate*, *flint*, *enamel*, *stained*, or *paste* glass; or of *spread window* glass, commonly called *broad glass*; or of *window glass* (not being *spread glass*) whether flashed or otherwise manufactured, commonly called *crown glass*, or *German sheet glass*; or of *common bottles* and vessels used in chemical laboratories; or of *garden glass*, or any other vessel made of common bottle metal, shall from 1st *July* 1787, until 1st *January* 1788, keep an exact account of the real waste of all materials, metal, or other preparations which shall arise in the making of any of the sorts of glass aforesaid; and shall within six weeks of 1st *January* 1788, transmit a copy thereof to the commissioners of excise, which account shall be verified on

oath by such maker, or his chief workman, before one of the said commissioners, or the collector or supervisor of the district. *Id. s.* 12.

Regulations in the making of flint glass.

By 32 *G.* 3. *c.* 40. after 5th *July* 1792, every maker of *flint* glass, who shall have given notice for beginning to fill any pot with metal or materials for making of flint glass, in manner required by law, shall be allowed three hours next after the time specified in such notice, before he shall be required to begin to fill such pot, notwithstanding any thing in any former act to the contrary. *s.* 1. 11.

And every such maker of *flint* glass, shall, within six hours next after the time he shall begin to fill such pot, put into the same one-fourth part at least of the true weight of the metal or preparation specified in such notice as being to be made use of in the making of flint glass; on the penalty of 50*l.* *s.* 2.

And no such maker of *flint* glass shall unstop or take down any stopper from his pot, containing any metal or preparation for the making of flint glass, unless one hour's previous notice in writing be given to the officer of excise of the time he intends to begin; on pain of forfeiting 50*l.* *s.* 3.

And if he shall not begin in pursuance of such notice, the same shall be void, and he shall be obliged to give a new notice in manner aforesaid, under the like penalty. *s.* 4.

Provided, that this shall not extend to unstopping or taking down any stopper from any such pot, which may happen to crack or break while filled with any metal or preparation, for the sole purpose of preventing the loss thereof; or from any other pot for the sole purpose of discovering such broken pot; nor to subject any such maker to the said penalty of 50*l.* for unstopping or taking down any stopper from any pot during the time of the filling thereof, and within 36 hours from the time of his having begun to fill such pot. *s.* 5, 6.

And every such maker (on his giving to the officers six hours previous notice in writing of his intention) may glaze any new pot previously gaged and taken on account of by the proper officer, and specified in such notice, and for that purpose, may take out of any pot any quantity of metal on which the duty has been charged, not exceeding 40 pounds in the whole, and to put such metal immediately, in the presence of such officer, into such new pot, for the sole purpose of glazing the same, without such maker being liable to any further duty in respect of such metal, or incurring any penalty by reason thereof. *s.* 7.

And every such maker, on his giving six hours notice in writing in manner aforesaid, may cleanse any pot in which any stained glass hath been melted, and specified in such notice, by taking any quantity of unstained metal on which the duty has been charged, not exceeding ten pounds in the whole, and by lading and unlading the same in the presence of such officer into and from such pot for that purpose, and by repeating such operations in the presence of such officer, until such pot shall be sufficiently cleansed, without incurring any penalty. *s.* 8.

Any person who hath paid the duty may export the glass, and have the duty drawn back; and if it shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation, and moreover every person concerned therein shall forfeit 100*l.* 19 *G.* 2. *c.* 12. *s.* 20, 1, 2. 17 *G.* 3. *c.* 39. *s.* 35, 6, 7. 20 *G.* 3. *c.* 6. 27 *G.* 3. *c.* 13. 34 *G.* 3. *c.* 27. *s.* 3. Exportation.

And for the better regulating the exportation of glass; every person intending to export any glass, shall give, if within the limits of the chief office in *London*, 12 hours notice, elsewhere 24 hours, to the officer of excise, of his intention to pack up such glass, and of the time and place; and such officer shall attend and see the same packed up, and shall put a seal or mark thereon: And if any person shall open such package, or wilfully destroy or deface such seal or mark, (except the officers of excise,) he shall forfeit 20*l.*——Provided that if such person shall not begin and proceed to pack up such glass at the time mentioned in such notice, or within one hour after, such notice shall be void, and he shall be obliged to give a fresh notice: And if after the shipping any such glass, the same shall be relanded, or put into any other vessel within *Great Britain* (shipwreck, *&c.* excepted), the same shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation, and may be seized by any officer of excise or customs. 26 *G.* 3. *c.* 77. *s.* 3, 4.

And every maker shall keep just scales and weights at the place where the glass is made, and assist the officer in weighing, on pain of 50*l.* 19 *G.* 2. *c.* 12. *s.* 14. Maker to keep scales and weights.

And by 10 *G.* 3. *c.* 44. if he shall make use of insufficient scales or weights, he shall forfeit 100*l.* but not to be prosecuted both on this and the former act. And by 28 *G.* 3. *c.* 37. the same shall be forfeited, and may be seized by any officer of excise. *s.* 15.

And if in weighing his stock he put any other substance therein, whereby the officer may be hindered or impeded Deceiving or obstructing the officer.

from taking a just account; or shall forcibly obstruct such officer; he shall forfeit 100 l. 26 G. 3. c. 77. s. 8.

And if any maker or other person shall obstruct any officer, in securing the duties; he shall forfeit 50 l. 19 G. 2. c. 12. 17 G. 3. c. 39. s. 37.

Power of the justices.

The penalties to be recovered or mitigated as by the laws of excise, or in the courts at *Westminster*; and to be employed, half to the use of the king, and half to him that shall sue. 19 G. 2. c. 12 s. 39. 17 G. 3. c. 39. s. 41. 27 G. 3. c. 28. s. 13. 32 G. 3. c. 40. s. 9. 35 G. 3. c. 114. s. 27.

But no person concerned in the glass trade, or in any glass-house, shall act as a justice in any matter relating to these duties. 17 G. 3. c. 39. s. 38.

VIII. Hops.

Importation and exportation.

By 27 G. 3. c. 13. for every hundred weight of hops imported, shall be paid a duty of 5 l. 18 s. 10 d. And there shall be allowed a drawback, on exportation, of 4 l. 3 s. 4 d. *Sched.* (A).

And if any foreign hops shall be landed before entry and duty paid, or without warrant for landing; the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore shall forfeit 5 l. a hundred weight. 7 G. 2. c. 19. s. 1.

Hops of *British* growth may be exported to *Ireland*; bond being first given to the commissioners of excise, that the said hops shall not be relanded; and oath made before such person as they shall appoint, that the duties have been duly charged; whereupon the person exporting the same shall have a drawback of the duties before paid: And provided the said hops shall be relanded, or put into any ship in *Great Britain*, (except in case of shipwreck or unavoidable accident,) the same, or the value thereof, shall be forfeited, over and above the penalty of such bond; and may be seized by any officer of the customs or excise. 26 G. 3. c. 5. s. 1, 2. 4.

Home duty.

And for every hundred weight of hops grown in *Great Britain*, which shall be cured and made fit for use, shall be paid by the owner or possessor thereof, a duty of 1 d. $\frac{12}{20}$ of a farthing. 27 G. 3. c. 13. *Sched.* (F).

Hop grounds to be entered.

In order whereunto, every person who shall plant or have growing any hops, for sale or not for sale, shall yearly on or before *Aug.* 1, give or send notice in writing under

under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township, or place, and the name of the owner or occupier; on pain of 40 s. an acre. 9 *An.* *c.* 12. *s.* 6.

But such person shall not be obliged, for giving notice, to go further than the next market town. *s.* 7.

And the officer who shall receive the notice, shall in five days enter the same in a book to be kept at the office for that purpose; on pain of 40 s. *s.* 7.

Also no person shall use any oust, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice thereof shall have been given, on pain of 50 l. 9 *An.* *c.* 12. *s.* 8. Places of curing and keeping to be entered.

And all hops shall in six weeks after gathering, be brought to be cured and bagged at such ousts or places notified, and no other; on pain of 5 s. a pound. *s.* 9.

The officer shall at all times, by day or night, and if in the night in the presence of a constable, be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping of hops; and if the planter or owner shall obstruct him, he shall forfeit 20 l. 9 *An.* *c.* 12. *s.* 15. Officers to enter and survey.

The owners of hops, before they respectively begin to bag or weigh their hops, shall send notices in writing under their hands to the next excise office or officer, of the day and hour when they intend to begin either to bag or to weigh; which notice, as to such as shall be bagged or weighed the first week, shall be given 24 hours before; and as to every other bagging or weighing 48 hours; on pain of 50 l. 6 *G.* *c.* 21. *s.* 25. Notice of bagging and weighing.

And by the 14 *G.* 3. *c.* 68. the officer shall, on pain of 5 l. weigh the bags or pockets; and shall, before the hops shall be put therein, mark on the outside of each bag or pocket the true weight or tare thereof, and also the planter's name and place of abode, together with the date of the year in which such hops were grown: And if he shall put his mark of the weight of the hops upon any bag, before he hath weighed such bags and hops therein, he shall forfeit 40 s. on conviction before one justice, by confession, or oath of one witness, by distress; half to the informer, and half to the overseers for the use of the poor. *s.* 1, 2. Bags to be marked.

And if any person shall forge, alter, or obliterate any such mark on such bag or pocket, he shall forfeit 10 l. in like manner; and in default of payment, shall be impri- Forging, &c. marks.

ſoned ſix months, or until he ſhall have paid the penalty. ſ. 3.

Provided, that no perſon ſhall be proſecuted on this act, unleſs complaint ſhall be made within ſix calendar months after the ſale of any ſuch hops. ſ. 4.

Officer to attend.

And the officer ſhall cauſe an entry of the ſaid weight to be made in his book; and ſhall make return thereof in writing to the commiſſioners or to whom they ſhall appoint, leaving a true copy (if demanded) of ſuch return under his hand with the planter or owner; and if he ſhall neglect or refuſe to leave ſuch copy (after demand in writing, 12 *G.* *c.* 28. ſ. 30.) he ſhall forfeit 5 l. 9 *An.* *c.* 12. ſ. 11.

Owner to keep ſcales and weights.

The owners ſhall keep at their ouſts, ſtorehouſes, and places of keeping their hops, weights and ſcales; and permit the officer to uſe them; and ſhall not ſuffer any falſe weights to be uſed; on pain of 20 l. 6 *G.* *c.* 21. ſ. 26.

And by the 10 *G.* 3. *c.* 44. a penalty of 100 l. is inflicted for falſe ſcales or weights, but the offender not to be proſecuted on both acts. And by 28 *G.* 3. *c.* 37. the ſame ſhall be forfeited, and may be ſeized by any officer of exciſe. ſ. 15.

Hops may be put into caſks inſtead of bags.

The owners may, if they think fit, put the hops into caſks, inſtead of bags; giving the like notice, and being ſubject to the ſame regulations, for caſking as for bagging. 6 *G.* *c.* 21. ſ. 27, 28.

And the officer ſhall cauſe the caſks to be weighed, and the weight to be marked on the caſk, and alſo the weight of the hops therein. ſ. 28.

Deceit in bagging.

No perſon ſhall take any hops of foreign growth out of the bags in which they are imported, and rebag the ſame in *Britiſh* bagging, in order to ſell or export them as *Britiſh* hops; on pain of 10 l. a hundred weight: And if any perſon ſhall endeavour to defraud the king of the duty, by uſing twice or oftener the ſame bag, with the officer's mark thereupon; he ſhall forfeit 40 l. 9 *An.* *c.* 12. ſ. 23.

Removal before bagging.

No planter or owner ſhall (on pain of 50 l.) remove from his ouſt, ſtorehouſe, or other place, any hops until they have been cured, bagged, and weighed, and the duties aſcertained; unleſs where the officer, after notice, ſhall not attend the bagging and weighing. 9 *An.* *c.* 12. ſ. 16.

Concealing.

If any planter or owner ſhall conceal any hops, to avoid the duties; he ſhall forfeit 20 l. and the hops concealed. ſ. 17.

And

Privately conveying.

And if any gatherer of hops, or other perſon, ſhall privately convey any hops from the place of growing, or where they ſhall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he ſhall forfeit 5 s. a pound. 9 *An.* *c.* 12. *ſ.* 18.

Payment of the duties.

The planter or owner ſhall in ſix months after the hops ſhall be cured, bagged, or weighed, pay off the duties; on pain of double duty, two-thirds to the king, and one-third to the informer. 9 *An.* *c.* 12. *ſ.* 14.

Adulterating hops.

If any perſon ſhall mix with hops any drug or ingredient to alter the colour or ſcent; he ſhall forfeit 5 l. a hundred weight (P). 7 *G.* 2. *c.* 19. *ſ.* 2.

T 35 *G.* 3. *K.* v. *Pack.* The defendant was convicted on the above act in the penalty of 5 l. for putting in the fire, by which 100 weight of hops were drying, a quantity of ſulphur and brimſtone, to alter the colour thereof, the vapour and fumes of which aſcended to the hops placed over ſuch fire, and the hops being then in a moiſt ſtate, fixed to the hops, and made them appear brighter. L. *Kenyon* was clearly of opinion that this is an offence within the act of parliament; and the conviction was affirmed. *Durnf.* and *Eaſt*, 6 V. 374.

Uſing other things inſtead of hops.

No common brewer, innkeeper, or victualler ſhall uſe any broom, wormwood, or any other bitter ingredient, to ſerve inſtead of hops; on pain of 20 l. (Except the infuſion of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 *An.* *c.* 12. *ſ.* 24.

Penalties how to be recovered.

The penalties aforeſaid (where not otherwiſe directed) ſhall be recovered and mitigated as by the laws of exciſe, and diſtributed half to the king, and half to him that ſhall ſue. 9 *An.* *c.* 12. *ſ.* 26. 24 *G.* 2. *c.* 40. *ſ.* 29. 26 *G.* 3. *c.* 5. *ſ.* 8.

Hops liable to diſtreſs for the duties and penalties.

And all hops in the cuſtody of any planter or owner, or perſons in truſt for him, ſhall be liable to the duties in arrear, and to the penalties; in the ſame manner as if the debtor or offender were the lawful owner. 9 *An.* *c.* 12. *ſ.* 19.

Cutting hop-binds.

If any perſon ſhall unlawfully and maliciouſly cut any hop binds growing on poles, in any plantation of hops; he ſhall be guilty of felony, without benefit of clergy. 6 *G.* 2. *c.* 37. *ſ.* 5, 6.

Which offence is treated of more at large in the title, **Black Act.**

IX. Leather.

Importation and exportation.

By 27 *G.* 3. *c.* 13. a duty is laid upon all hides and ſkins, vellum and parchment, imported: and drawbacks allowed on the exportation thereof. *Sched.* (A).

And by 31 *G.* 3. *c.* 27. the ſaid duties are repealed, and other duties and drawbacks are granted and allowed in lieu thereof. *ſ.* 1. 3.

And after the duty ſhall be paid on importation, the officers of the cuſtoms ſhall cauſe every hide or ſkin to be marked, to denote the payment of the duty. 9 *An.* *c.* 11. *ſ.* 6.

But by the 15 *G.* 3. *c.* 35. Raw or undreſſed goat ſkins may be imported for five years, duty free. Which act is by 31 *G.* 3. *c.* 43. *ſ.* 7. made perpetual.

Duty on leather dreſſed in Great Britain.

	£.	s.	d.
And by the ſaid act 27 *G.* 3. *c.* 13. a duty is laid upon all hides and ſkins tanned in *Great Britain* of what kind ſoever; (that is to ſay,) for every pound weight of *calves* ſkins, *kips*, *hogs* ſkins, *dogs* ſkins, and *ſeal* ſkins, and *ſheep* and *lamb* ſkins for gloves, and *bazil* - - - -	0	0	1½
And by the 31 *G.* 3. *c.* 27. *ſ.* 2. For every dozen of *goat* ſkins tanned with ſhumack, or otherwiſe to reſemble *Spaniſh* leather - - - - -	0	4	0
And for every dozen of *ſheep* ſkins tanned for roans (being after the nature of *Spaniſh* leather). *Id.* - - -	0	2	3
For every 100 l. of the real value of all other ſkins and pieces of hides and ſkins which ſhall be tanned, not before particularly charged. 27 *G.* 3. *c.* 13. *Sched.* (F)	30	0	0
All which ſaid duties ſhall be paid by the tanners.			
And for all hides of *horſes* which ſhall be dreſſed in allum and ſalt, or meal, or otherwiſe tawed, for each hide - -	0	1	6
And for all hides of *ſteers*, *cows*, or any other hides of what kind ſoever (horſes excepted) which ſhall be ſo dreſſed, for each hide	0	3	0
For every pound weight of *calves* ſkins, *kips*, and *ſeal* ſkins, ſo dreſſed - -	0	0	1½

For

	£.	s.	d.
For every dozen of *ſlink calf* ſkins ſo dreſſed with the hair on - - - -	0	3	0
For every dozen of *ſlink calf* ſkins ſo dreſſed or tawed without hair, or *dogs* ſkins, or *kid* ſkins (except ſuch as paid the full duty on importation) - - - -	0	1	0
For every pound weight of *buck* and *doe* ſkins (except ſuch as paid the full duty on importation) dreſſed as aforeſaid - -	0	0	6
For every dozen of *goat* ſkins, or *beaver* ſkins dreſſed as aforeſaid - - - -	0	2	0
For every pound weight of *ſheep* or *lamb* ſkins dreſſed as aforeſaid - - -	0	0	1½
For every 100 l. of the real value of all ſkins or pieces of hides or ſkins which ſhall be tawed (not before particularly charged)	30	0	0

Which ſaid duties ſhall be paid by the tawers or makers thereof into leather.

For every dozen of *vellum* made in *Great Britain* - - - - -	0	3	5½
And for every dozen of *parchment* ſo made *Schedule* (F) - - - -	0	1	8¾

And by 28 *G.* 3. *c.* 37. the duties granted by the ſaid act 27 *G.* 3. *c.* 13. on hides and ſkins *dreſſed in oil* in *Great Britain* are repealed, and the following duties granted in lieu thereof:

For every pound weight of *buck*, *deer*, and *elk* ſkins, dreſſed in oil - - -	0	1	0
For every pound weight of *ſheep* and *lamb* ſkins dreſſed in oil - - - -	0	0	3
And for every pound weight of all other hides or ſkins, or parts thereof, dreſſed in oil - - - - - -	0	0	6

The ſaid duties to be paid by the oil leather dreſſers. *ſ.* 1, 2.

And certain drawbacks are allowed on the exportation thereof. *ſ.* 3.

What is meant by hides tanned, dreſſed in oil, and tawed.

By *tanned* hides or ſkins, or pieces thereof, are meant only ſuch as are tanned in wooze, made of the bark of trees or ſhumack; and by hides and ſkins *dreſſed in oil* are meant ſuch as are made into leather in oil, or with any materials whereof the chiefeſt ingredient ſhall be oil; and by *tawed* hides or ſkins, are meant ſuch as are dreſſed or made into leather in allum and ſalt, or meal, or other ingredients

gredients properly used by the tawers of white leather. 9 *An.* c. 11. *s.* 3.

[*N. B.* By 34 *G.* 3. *c.* 63. *Samuel Aston* is allowed to tan hides and skins in a particular manner as mentioned in his letters patent. And by 35 *G.* 3. *c.* 97. all hides and skins tanned by the said method, or by any method whatever, shall be deemed to be within the meaning of the acts relating to the duties on hides and skins..]

Licences to be taken out by tanners.

And by 24 *G.* 3. *c.* 41. *sess.* 2. every tanner shall take out a licence annually, for which he shall pay, if within the bills of mortality, 5 l. elsewhere 2 l. 10 s. on pain of 30 l. *s.* 1.

Tawers.

And every *tawer* shall take out a licence annually, for which he shall pay 1 l. on the penalty of 10 l. *Id.*

Dressers in oil.

And every *dresser of hides in oil* shall take out a licence annually, for which he shall pay 2 l. on the penalty of 20 l. *Id.*

Curriers.

And every *currier* shall take out a licence, annually, for which he shall pay 2 l. on the penalty of 20 l. *Id.*

Makers of vellum.

And every maker of *vellum or parchment* shall take out a licence annually, for which he shall pay 1 l. on the penalty of 10 l. *Id.*

Licences to be renewed annually.

And every person who shall take out such licences shall renew the same annually, ten days at least before the end of the year, on the like penalties as aforesaid. *Id. s.* 7.

Persons in partnership.

Provided, that persons in partnership need only take out one licence for one house. *Id. s.* 8.

Who shall be deemed tawers or dressers.

Collar-makers, glovers, bridle-cutters, and others, who dress skins or hides, or pieces thereof, in oil, allum, and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 2 *An.* c. 11. *s.* 28.

No leather to be twice charged.

Any hide or skin which hath once paid the duty shall not be charged under any other denomination. 9 *An.* c. 11. *s.* 3.

Officers for these duties.

The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. *s.* 13. 38.

Places of working to be entered.

Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same; on pain of 50 l. *s.* 15.

And

And if any perſon ſhall not make ſuch entry, or ſhall uſe any private tan-yard, workhouſe, pit, fat, mill, or place, he ſhall forfeit 20 l.; and the goods found in ſuch private tan-yard or place not entered, or the value thereof, ſhall alſo be forfeited. *ſ.* 17.

Officers to enter and ſurvey.

The officers at all ſeaſonable times, in the day-time, may enter into any tan-yard, workhouſe, warehouſe, mill, or other place; and if the owner or occupier ſhall refuſe him entrance, he ſhall forfeit 10 l. *ſ.* 17.

Notice of removing to the place of drying.

The ſaid tanners and others ſhall give notice to the officer, of their places for drying and keeping of hides or ſkins, vellum or parchment, and they ſhall give two days notice in writing to the officer, before they take the ſaid goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they ſhall permit the officers to take an account; and ſhall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the ſaid goods from the place of drying, make entry with the officer of the number and quality, and verify the ſame on oath, to be adminiſtered by any juſtice of the peace, or collector or ſupervisor; and they ſhall not remove any of the ſaid goods from the place of drying, until the duty be firſt charged, entered, and marked. *ſ.* 16.

And if any perſon ſhall not ſend ſuch notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the ſaid goods contrary to this act, he ſhall forfeit 20 l.; and alſo ſuch goods unlawfully removed, or the value thereof, ſhall be forfeited. *ſ.* 17.

Concealing to avoid the duty.

And if any tanner or other ſuch perſon ſhall conceal any hide or ſkin, vellum or parchment, or any part thereof; he ſhall forfeit 20 l. and alſo the goods concealed, or the value thereof. *ſ.* 17.

Shaving hides.

And if any tanner or other perſon ſhall ſhave any hide or calf ſkin before the ſame be thoroughly tanned, which ſhall be impaired thereby, and the duty diminiſhed; the ſame ſhall be forfeited, or the value thereof. *ſ.* 12.

Tanners to keep ſcales and weights.

Tanners, and other the ſaid perſons ſhall keep ſufficient juſt ſcales and weights; and ſworn officers ſhall be appointed, for the weighing and other matters to be performed at every ſuch yard or dreſſing place. *ſ.* 18.

And if he ſhall not keep juſt ſcales and weights, or ſhall not permit his hides or ſkins to be weighed, or neglect or refuſe to bring the ſcales, or to aſſiſt at the weighing: he ſhall forfeit 50 l. *ſ.* 26.

And by the 10 G. 3. c. 44. if he ſhall uſe falſe or inſufficient ſcales or weights, he ſhall forfeit 100 l.; but not to be proſecuted both on this and the former act: And by the 28 G. 3. c. 37. ſ. 15. the ſame ſhall be forfeited, and may be ſeized by any officer.

Cheating or obſtructing officers.

And if in the weighing of ſtock, he ſhall put any other ſubſtance therein, or ſhall forcibly hinder, or by any contrivance prevent ſuch officer from taking a juſt account; he ſhall forfeit 100 l. 26 G. 3. c. 77. ſ. 8.

Duty to be aſcertained before removal.

Tanners, and other the ſaid perſons, ſhall before any the ſaid goods be removed from the place of dreſſing, drying, or keeping, give two days notice in writing to the officer (for giving of which notice he ſhall not be obliged to go further than the next market town); and ſhall permit the officer to weigh the goods chargeable by weight, and bring the ſcales: and aſſiſt in weighing; and ſhall permit the officer to take an account of the number and quality of the goods to be charged by tale; and ſhall aſcertain the value of ſuch goods as are to be charged *ad valorem*, by his oath to be taken before the ſaid officer, or a juſtice of the peace. 9 *Ann.* c. 11. ſ. 19.

Charge by the officer.

And after the duties are aſcertained by weight, tale, or value reſpectively, the officer ſhall enter the ſame in a book, and make return thereof to the commiſſioners or whom they ſhall appoint, leaving a true copy thereof under his hand, with ſuch tanner or other perſon. ſ. 20.

Leather to be marked.

Immediately after the duty ſhall be aſcertained, and entry thereof made, the officer ſhall cauſe every hide or ſkin, and every piece of a hide or ſkin, and all vellum and parchment to be marked. ſ. 21.

In what part to be marked.

And if ſuch tanner or other perſon ſhall deſire the mark to be made on any particular part of the hide or ſkin, the officer ſhall mark it accordingly. ſ. 22.

Removing before marked.

And if any tanner, or other ſuch perſon, ſhall remove from his yard or drying place any the ſaid goods, before the duties ſhall be charged, and before they be marked; or if any buyer ſhall carry away the ſame before they be marked, he ſhall forfeit 50 l.: and the ſaid goods ſo unlawfully ſold or removed, ſhall alſo be forfeited. ſ. 26.

Counterfeiting the ſtamp.

And if any perſon ſhall counterfeit the ſtamp, or knowingly ſell any of the ſaid goods with a counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy. 9 *An.* c. 11. ſ. 44. 38 G. 3. c. 54. ſ. 10.

Leather ſtamped to be kept ſeparate.

And to prevent frauds between the officers and tradeſmen, all tanners, tawers, and dreſſers of hides, ſkins, vellum and parchment, ſhall keep thoſe which have not been

been ſtamped, from thoſe which have, and alſo thoſe which have been laſt ſtamped, from thoſe which have been ſtamped before, for 24 hours within the bills, and for two days elſewhere; unleſs they ſhall have ſooner been weighed and taken account of by the ſurveyor or ſuperviſor; on pain of 10l. 5 *G. c.* 2. *ſ.* 10l.

And they ſhall not remove the ſame for 24 hours from the ſtamping thereof, unleſs the ſame ſhall ſooner have been weighed by the ſuperviſor or ſurveyor, that ſo they may have an opportunity to reweigh the ſame after the inferior officers: And if any additional weight ſhall be found, the ſaid hides or ſkins, and pieces thereof, ſhall be charged accordingly. And if ſuch tanner, tawer, or dreſſer ſhall remove, or cauſe or ſuffer the ſame to be removed contrary hereunto; he ſhall forfeit 20l. 5 *G.* 3. *c.* 43. *ſ.* 21. And not to be removed till after 24 hours.

And he ſhall keep ſcales and weights for ſuch re-weighing; and bring the hides and ſkins and pieces thereof to the ſcales; and aſſiſt the ſurveyor and ſuperviſor in reweighing and examining from time to time the depending ſtock of ſuch tanner, tawer, or dreſſer; on pain of 50l. *ſ.* 22.

Perſons within the bills of mortality ſhall pay off the duties in 14 days to the commiſſioners, and elſewhere in ſix weeks to the collectors after the ſaid goods ſhall be marked. 9 *An. c.* 11. *ſ.* 23. Payment of the duties.

But no perſon ſhall be obliged, for payment of the duties, to go further than the next market town. *ſ.* 24.

And perſons not paying as aforeſaid ſhall forfeit double duty; and ſhall not deliver out any of the ſaid goods until the duty be paid, on pain of double value. *ſ.* 25.

Every tanner, and other ſuch perſon, ſhall once in three months (if demanded) make an account with the officer, of the goods taken out of the wooze, or other ingredients, and of his entries thereof, and balance the ſaid account by the goods which have been charged, and thoſe which are in his poſſeſſion unmarked and uncharged; on pain of 50l. *ſ.* 27. Tanners to balance accounts with the officers.

Any two juſtices reſiding near, may hear and determine offences; who ſhall, on information or complaint in three months after ſeizure made, or offence committed, ſummon the party accuſed, and the witneſſes, and on appearance or contempt of the party (on proof of notice given) ſhall examine witneſſes on oath, and give judgment, and iſſue warrants for levying the pecuniary penalties by diſtreſs and ſale (if not redeemed in ſix days.) *ſ.* 36. Penalties how recoverable.

And

Mitigation. And they may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the charges. *s.* 37.

Appeal. Persons aggrieved may appeal to the next sessions, who may determine the same, and issue warrants for levying the penalties. *s.* 36.

Certiorari. And no *certiorari* shall be allowed. *s.* 47.

X. Linen cloth, silks, cottons, and callicoes.

Former duties repealed. By the 27 *G.* 3. *c.* 13. after 10th *May* 1787, all former duties are repealed. *s.* 1. 35.

New duties. And in lieu thereof the following duties shall be paid upon all goods which shall be printed, stained, painted, or dyed in *Great Britain*, (except such as shall be dyed throughout of one colour only,) as follows: *Sched.* (F).

	£.	s.	d.
For every yard in length (reckoning yard wide) of foreign *calicoes* and *muslins* -	0	0	7
And for every yard in length (reckoning yard wide) of *linens* and *stuffs* made either of cotton or linen mixed with other materials; *fustians*, *velvets*, *velverets*, *dimities*, and other figured stuffs made of cotton and other materials mixed, or wholly made of cotton wool, wove or printed in *Great Britain*; except stuffs made of woollen, or whereof the greatest part in value is woollen, [and by 28 *G.* 3. *c.* 37. *s.* 8. the same is extended to all such stuffs, other than such for or in respect whereof any duty of excise is imposed,] a duty of -	0	0	3½
And for every yard in length (reckoning yard wide) of stuffs wholly made of cotton wool wove and printed in *Great Britain*, commonly called *British manufactory* and *British muslins* - - - - -	0	0	3½
And for every yard in length (reckoning half yard wide) of *silks* printed as aforesaid, (silk handkerchiefs excepted), over and above the duties payable on importation - -	0	1	1¾
And for every yard square of *silk handkerchiefs* printed as aforesaid, and so in proportion if wider or narrower, besides the duties payable on importation - - -	0	0	4½

The

The ſaid duties to be paid by the printer, ſtainer, painter, or dyer thereof.

And for every yard in length (yard wide) of *French* printed or dyed *callicoes* or *muſlins* (except dyed of one colour as aforeſaid) imported from *France* - - - £. s. d. 0 0 7

And for every yard in length (yard wide) of *French* printed or dyed *linens* and *ſtuffs*, made either of cotton or linen mixed with other materials, *fuſtians*, *velvets*, *velverets*, *dimities*, and other figured ſtuffs, made of cotton and other materials mixed, or wholly made of cotton wool (except dyed of one colour as aforeſaid) imported from *France* - 0 0 3½

Licence.

And every callico printer, and printer, painter, or ſtainer, of ſilks, linen, cottons, or ſtuffs, ſhall take out a licence, for which he ſhall pay 10 l. and ſhall renew the ſame annually ten days at leaſt before the end of the year; on pain of forfeiting 50 l. 24 *G.* 3. *c.* 41. *ſeſſ.* 2. *ſ.* 1. 7.

Ribbands and ſilks.

And by 7 *G.* 3. *c.* 47. whereas doubts have ariſen whether *ribbands* and *ſilks* ſo printed, ſtained, or painted, being leſs than half a yard in breadth, are within the meaning of the ſaid acts; it is declared, that all ribbands and ſilks printed, ſtained, or painted in *Great Britain*, though leſs than half a yard in breadth, are within the meaning thereof, and liable to the ſaid duties, according to the proportions in which ſuch ribbands and ſilks are made. *ſ.* 6.

Obſervation as to callicoes.

But it is to be obſerved, that ſuch painted or ſtained callicoes cannot be of uſe for wearing apparel, and therefore the printing or ſtaining of them muſt be chiefly in order for exportation; for by the 7 *G. ſt.* 1. *c.* 7. it is enacted, that no perſon ſhall uſe or wear in any apparel, any printed, painted, ſtained, or dyed callico; on pain of 5 l. to the informer, on conviction on the oath of one witneſs before one juſtice; who ſhall, on information on oath in ſix days after the offence, ſummon the party, and upon his appearance or contempt, examine the matter, and on proof by confeſſion, or oath of one witneſs, determine the ſame, and on conviction cauſe the penalty to be levied by diſtreſs and ſale, rendering the overplus (charges of diſtreſs and ſale being firſt deducted): Provided that perſons aggrieved may appeal to the next quarter ſeſſions, giving ſix days notice. *ſ.* 1.

Prohibition of callicoes.

Penalty on ſelling them.

And if any perſon ſhall offer the ſame to ſale, or any houſehold furniture made up of or mixed therewith, unleſs for exportation; he ſhall forfeit 20 l. half to the informer, and

and half to the poor of the parish or place where the offence shall be committed, to be recovered in the courts at *Westminster*, with full costs, on prosecution in six months; and if he is a steward or other officer of a corporation, he shall also forfeit his office. *s.* 2. 4.

Or using them in furniture.

And no person shall use the same in any household furniture on like pain of 20 l. *s.* 3.

Exceptions.

But this shall not extend to callicoes dyed all blue. *s.* 11.

But the same shall extend to stuff made of cotton, or mixed therewith, printed or painted; and to callico chequered or striped; and to callico stitched or flowered in foreign parts with any colour (muslins, neckcloths, and fustians excepted). *s.* 10.

But it shall be lawful to use stuff made of linen yarn and cotton wool manufactured and printed or painted in *Great Britain*, provided the warp thereof be entirely linen yarn. 9 *G.* 2. *c.* 4.

Observations as to cottons.

By the 14 *G.* 3. *c.* 72. Whereas doubts have arisen, whether stuffs wholly made of raw cotton wool within this kingdom ought not to be considered as *callicoes*, and as such be liable to the like duties, penalties, and prohibitions; it is enacted, that no greater duty shall be paid for the same than 3 d. a yard as aforesaid, and that any person may use the same in apparel or otherwise. *s.* 1, 2.

To have three blue stripes in the edge.

And in every piece thereof shall be wove in the warp in both selvedges three blue stripes, each stripe of one thread only; the first of which stripes shall be the first or outermost thread, the second of the said stripes shall be the third thread, and the third of the said stripes shall be the fifth thread: and each piece shall be stamped at each end with a stamp to be provided by the officers of excise; and instead of the word *callico*, which stands for foreign callicoes, each piece shall be marked with the words *British manufactory*. *s.* 3.

Selling without such mark.

And if any person shall expose to sale any stuffs wholly made of cotton, and printed, painted, stained, or dyed (muslins, neckcloths, and fustians excepted), wherein such mark shall not be woven; he shall forfeit the same, and 50 l. for each piece. *s* 4.

Exception.

Provided always, that nothing in this act shall extend to cotton velvets, velverets, or other fustians, not manufactured in *Great Britain*. *s.* 5.

Counterfeiting stamps.

And if any person shall counterfeit such stamp, or knowingly sell any such stuffs with a counterfeit stamp; he shall be guilty of felony, without benefit of clergy. *s* 8. 10.

And if any perſon ſhall import any callicoes, muſlins, or other goods or ſtuffs made of linen yarn only, or of linen yarn and cotton wool mixed, or wholly of cotton wool, wherein ſhall be wove in the ſelvedge any ſuch blue ſtripe; he ſhall forfeit the ſame, and 10 l. for each piece. *ſ.* 9. Importing callicoes ſo marked.

And upon oath made by any perſon, that he hath reaſon to ſuſpect, that any printed, painted, ſtained, or dyed ſtuffs, wholly made of cotton, for which a duty ought to have been paid, are in the cuſtody or poſſeſſion of any draper or other perſon for his uſe, without having thereupon ſuch ſtamps or marks as aforeſaid; two commiſſioners within the bills, and two juſtices elſewhere, ſhall iſſue their warrant to any officer of the ſaid duties with the aſſiſtance of a conſtable, in the day time, to ſearch for the ſame, and to open doors, trunks, cheſts, and package, and to ſeize ſuch goods, and bring them to the next office for the ſaid duties. *ſ.* 11. May be ſearched for.

One moiety of the penalties and forfeitures in this act ſhall be to the king, and the other moiety to him who ſhall ſue. *ſ.* 12.

And if any queſtion ſhall ariſe, whether any of the ſaid ſtuffs wholly made of cotton were manufactured in *Great Britain*; the proof ſhall lie on the owner, and not on the proſecutor. *ſ.* 14. Proof to lie on the owner.

Every ſuch printer, painter, ſtainer, or dyer, ſhall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 50 l. 10 *An. c.* 19. *ſ.* 71. 25 *G.* 3. *c.* 72. *ſ.* 7. Houſes to be entered.

And by the 1 *G. ſt.* 2. *c.* 36. Where any perſon ſhall take upon him to print, paint, ſtain, or dye any ſilks, linens, or ſtuffs at any other place than the place of his uſual reſidence or exerciſe of his trade; he ſhall firſt make entry with the officer of the diviſion, where he intends to do the ſame, and pay down the duties, on pain of 50 l.; and alſo the ſaid goods ſhall be ſeized and forfeited. *ſ.* 21.

The officers ſhall at all times by day or night, and if by night in preſence of a conſtable, be permitted on requeſt to enter ſuch perſon's houſe, workhouſe, drying place, warehouſe, field, or other place uſed by him, and take an account, and ſhall make thereof a report in writing to the commiſſioners or to whom they ſhall appoint, leaving a copy, if demanded, under his hand; and if he ſhall make default in leaving ſuch copy (after demand in Officers to enter and take account.

writing, 12 *G.* *c.* 28. *ſ.* 30.) he ſhall forfeit 40*s.* 10 *An.* *c.* 19. *ſ.* 75.

Obſtructing the officer.

And none of the ſaid perſons ſhall obſtruct the officer in execution of his duty; on pain of 200 l. 10 *An.* *c.* 19. *ſ.* 78. 25 *G.* 3. *c.* 72. *ſ.* 8.

Entry of goods made.

Every ſuch printer and other perſon ſhall once in ſix weeks make entry in writing at the next office, on oath before the collector or ſupervifor, of all ſuch goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50 l. 10 *An.* *c.* 19 *ſ.* 72.

But no perſon ſhall be obliged to go to make entry further than the next market town. *ſ.* 73.

Officer may charge for goods miſſing.

If the officer ſhall miſs any quantity of the ſaid goods, whereof he had taken an account in his laſt ſurvey, and ſhall not on reaſonable demand receive ſatisfaction what is become of the ſame; the officer may charge ſuch perſon with the duties of the goods ſo miſſing, as if they were printed, painted, ſtained or dyed. *ſ.* 77.

Pieces to be marked before printing, &c.

And no printer ſhall begin to print, ſtain, paint, or dye any of the goods aforeſaid, before they ſhall have been meaſured and marked at both ends by the officer with a frame mark; on pain of forfeiting the ſame, and alſo 20 l. for every piece. 25 *G.* 3. *c.* 72. *ſ.* 9.

Defacing frame marks.

And if any printer ſhall wilfully cut out, or deface ſuch frame mark, he ſhall forfeit 50 l. *Id.* *ſ.* 11.

Goods concealed.

And if they ſhall conceal any the ſaid goods, to avoid the duty, they ſhall forfeit 50 l. And all the ſilks, callicoes, linens, and ſtuffs found in any private workhouſe, or other place whereof no notice hath been given, or the value thereof, ſhall be forfeited. 10 *An.* *c.* 19. *ſ.* 82. 25 *G.* 3. *c.* 72. *ſ.* 13.

Keeping goods in un-entered places.

And no printer ſhall keep any ſuch goods, marked or unmarked, in any room or place whereof no notice ſhall have been given as aforeſaid; on pain of forfeiting 50 l. and alſo ſuch goods, which may be ſeized by any officer. 25 *G.* 3. *c.* 72. *ſ.* 14.

Payment of the duties.

And ſhall within ſix weeks after entry, clear off the duties, on pain of forfeiting double; and if they ſhall deliver out any ſuch goods, after default in payment of the duties, before the ſame ſhall be cleared off; they ſhall forfeit double value of the goods. 10 *An.* *c.* 19. *ſ.* 74.

Removing before ſtamped.

And they ſhall not remove any the ſaid goods, till the officer hath taken acccount thereof, and until each piece be ſtamped or marked at both ends thereof; on pain of

50 l.

50 l. And the same so carried away without being marked, and found in the possession of any draper or other person for his use for sale, may be seized or the value thereof recovered. 10 *Ann.* *c.* 19. *s.* 79. 25 *G.* 3. *c.* 72. *s.* 10.

Goods surveyed to be kept separate.

And they shall keep the goods which have not been surveyed separate from the goods which have been surveyed; on pain of 50 l. 10 *An.* *c.* 19. *s.* 81. 25 *G.* 3. *c.* 72. *s.* 12.

Search for goods unstamped.

And on oath by any credible person, that he hath reason to suspect, that any the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale unstamped; [or any *French* linen, stuffs, fustian, velvet, velveret, dimity, or other figured stuffs for which the duty hath not been paid. 27 *G.* 3. *c.* 31. *s.* 15.] the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day time to search for the same, and to open doors, chests, trunks, and package, and to seize such goods, and bring them to the next office. 10 *An.* *c.* 19. *s.* 98. 25 *G.* 3. *c.* 72. *s.* 18.

Goods found unstamped may be seized.

And if any the said goods shall be found in any place, on land or water (except on shipboard for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged: the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 100 l. 5 *G.* *c.* 11. *s.* 15. 27 *G.* 3. *c.* 31. *s.* 16.

Callicoes, &c. to have three blue threads in the selvedge.

And all stuffs wholly made of cotton wool commonly called *callicoes*, that shall not have three blue threads in each selvedge as directed by 14 *G.* 3. *c.* 72. shall be deemed *foreign callicoes*, and on their being printed or dyed as aforesaid, shall be marked at both ends of every piece or remnant with the words *foreign callicoes for exportation*; and every draper or dealer who shall have in his custody any such goods, (except dyed throughout of one colour,) or any stuffs wholly made of cotton wool wove in *Great Britain*, commonly called *British manufactory* (muslins, neckcloths, and fustians excepted) not having such blue threads, shall forfeit 200 l. and also every such piece found in his custody. 25 *G.* 3. *c.* 72. *s.* 19.

To be marked before printing, with a frame mark,

And the owner or printer of any piece or remnant of *cossae* or foreign *muslins* and *callicoes* shall, before they be presented to the officer, mark the same at both ends with

a frame mark, containing, in words at length, his name and place of abode, and alſo the name ſuch goods are commonly known by, (except thoſe dyed throughout of one colour,) on pain of forfeiting 10 l. for every piece or remnant. *Id. ſ.* 20.

Name of the owner or printer and value of the goods to be marked.

And the owner or printer of any piece or remnant of linens or ſtuffs made of cotton mixed, or wholly made of cotton wool wove in *Great Britain*, called *Britiſh manufactory* or *muſlins*, plain, chequered, ſtriped, figured, or ornamented, (except fuſtians, velvets, velverets, dimities and other figured ſtuffs,) ſhall mark the ſame at both ends with a frame mark, containing in words at length, his name and place of abode, and the name and quality of ſuch goods, with the ready money price thereof, before the ſame is preſented to the officer in order to be printed or dyed: And if the owner is not the printer, then he ſhall deliver a note with ſuch goods, expreſſing the number of pieces, and their quality and value, and the time when delivered to the printer or dyer; which note ſhall be delivered by him to the officer before the ſame are printed or dyed, (except thoſe dyed of one colour as aforeſaid,) on pain that every ſuch piece not ſo marked ſhall be forfeited, and may be ſeized by any officer; and the owner, or perſon putting out the ſame, ſhall forfeit 20 l. And if ſuch perſon ſhall mark any ſuch piece at a leſs price than the real value as aforeſaid, he ſhall forfeit the ſame, which may be ſeized as aforeſaid, and alſo 20 l. *Id. ſ.* 21.

Frame marks being defaced.

And if the frame mark ſhall be defaced, the printer ſhall give notice thereof to the officer, who ſhall renew the ſame. *Id. ſ.* 22.

Counterfeiting the frame mark.

And if any perſon ſhall counterfeit or forge any frame mark he ſhall forfeit 100 l. *Id. ſ.* 23. 27 *G.* 3. *c.* 31. *ſ.* 1.

Counterfeiting the ſtamps.

And if any perſon ſhall counterfeit the ſtamp, he ſhall be guilty of felony without benefit of clergy.

And if any perſon ſhall knowingly ſell any of the ſaid goods with a counterfeit ſtamp, he ſhall forfeit 100 l. and be ſet in the pillory in ſome publick place two hours. 10 *An. c.* 19. *ſ.* 97. 13 *G.* 3. *c.* 56. 25 *G.* 3. *c.* 72. *ſ.* 17.

And moreover by 27 *G.* 3. *c.* 31. if any perſon ſhall knowingly ſell any of the ſaid goods with ſuch counterfeit ſtamp, with intent to defraud his Majeſty; he ſhall be guilty of felony without benefit of clergy. *ſ.* 14.

Exportation.

And every perſon who hath paid the duties, or bought ſuch goods of any perſon who hath paid the duties, may export the ſame, and ſhall be allowed ſuch drawbacks as ſet forth in 27 *G.* 3. *c.* 13. on conforming to the follow-

ing conditions, (viz.) The perſon intending to export ſuch goods ſhall give 12 hours notice in writing, if within the limits of the chief office, elſewhere 24 hours of his intention to pack up the ſame, and of the time and place, to the officer appointed for that purpoſe, who ſhall meaſure the ſaid goods, and ſee that the ſtamps and frame marks be taken off; and every piece ſhall be packed up in the preſence of ſuch officer, and ſhall be ſealed and marked as the commiſſioners ſhall direct; and if any perſon ſhall open ſuch package, or deface ſuch ſeal or mark, (except the officer at the port of exportation,) he ſhall forfeit 20 l. And the officer who ſaw the ſame packed up, ſhall take an account of the kinds and quantities thereof, and make a return to the officer who ſhall be appointed to receive the ſaid goods at the port of exportation. And ſuch perſon ſhall alſo give ſix hours notice in writing to ſuch officer, of the time and place of ſhipping the ſame; and ſhall give bond that ſuch goods ſhall not be unſhipped or relanded, or put into any other veſſel (unavoidable accidents excepted). And if any perſon ſhall unſhip or reland, or put into any other ſhip (except as aforeſaid,) any ſuch goods, the ſame ſhall be forfeited over and above the penalty of ſuch bond. 25 *G.* 3. *c.* 72. *ſ.* 27, 28, 29, 30. 25 *G.* 3. *c.* 74. *ſ.* 17. 19, 20, 21.

And if ſuch perſon ſhall not begin to pack ſuch goods within one hour after the time mentioned in ſuch notice, the ſame ſhall be void, and he ſhall be obliged to give a freſh notice. 25 *G.* 3. *c.* 74. *ſ.* 18.

But nothing herein ſhall extend to authorize the exportation of any goods, other than the ſame might have been exported before, nor to alter the manner thereof, except as aforeſaid. *ſ.* 22, 23.

And within 30 days next after the maſter or purſer of any veſſel where any *French* printed or dyed callicoes, muſlin, linen ſtuff, fuſtian, velvet, velveret, dimity, or other figured ſtuff, (other than dyed throughout of one colour,) ſhall be imported, ſhall make entry thereof upon oath with the collector as directed by 13 & 14 *G.* 2. and ſhall before the landing of ſuch goods pay the duties, and ſhall within ſuch 30 days land the ſame on pain of forfeiting ſuch goods, together with the package containing the ſame, which may be ſeized by any officer of exciſe, 27 *G.* 3. *c.* 31. *ſ.* 8. Importation.

And by 27 *G.* 3. *c.* 13. on the importation of any of the ſaid goods, a duty ſhall be paid as ſet forth in a ſchedule annexed to the ſaid act.

Regulations concerning cambricks and lawns made in England.

By the 4 *G.* 3. *c.* 37. (which eſtabliſheth the corporation of the *Engliſh* linen company for making cambricks and lawns) it is enacted, that the commiſſioners of exciſe, where there ſhall be a manufactory of cambricks or lawns, or of goods known under that denomination, ſhall appoint the ſuperviſor or other officer to ſeal the ſame; for which they ſhall have ſuch fee as the commiſſioners ſhall appoint. *ſ.* 17, 18.

The manufacturer to give notice in writing to the officer of the finiſhing of every piece, before it is taken out of the loom, who ſhall ſeal the ſame at both ends; on pain that ſuch manufacturer, taking the ſame out of the loom without having given ſuch notice, and having the ſame ſealed as aforeſaid, ſhall forfeit 5 l.; and every ſuch piece ſhall be forfeited, and may be ſeized by any officer of the cuſtoms or exciſe. *ſ.* 19.

And the officer, with convenient ſpeed, after notice, ſhall mark, and alſo number each piece; and make entry in writing, in books to be provided at the expence of the manufacturer, of the number ſet to each piece, the length thereof, and the number of threads in the warp; on pain of 10 l. *ſ.* 20.

If the officer ſhall mark any not made in *England*, or after the ſame is taken out of the looms, he ſhall forfeit 50 l. for each piece to him who ſhall ſue, and forfeit his office, and be incapacitated to hold any other office of truſt under the crown. *ſ.* 21.

If any perſon ſhall by bribery, or otherwiſe, prevail upon the officer to commit ſuch offence, he ſhall forfeit 100 l. and ſtand in the pillory two hours; and if he ſhall offer any ſuch bribe, he ſhall forfeit 50 l. *ſ.* 22.

And the officer ſhall yearly, in the month of *June*, tranſmit to the commiſſioners an account of all goods he ſhall have ſtamped, and a copy of the entries made, on pain of diſmiſſion: and he, or his executors, ſhall deliver up the ſeals, on demand from the commiſſioners, on pain of 200 l. *ſ.* 23.

Cambricks and lawns made in *England*, found unſtamped, ſhall be forfeited, and may be ſeized by any officer of the cuſtoms or exciſe; and after condemnation ſhall be ſold: And every perſon who ſhall ſell or expoſe to ſale, or have in his cuſtody for that purpoſe, any cambricks or lawns made in *England*, unmarked, ſhall forfeit 200 l. *ſ.* 24.

But the ſaid goods ſo ſeized, condemned, and ſold, ſhall not be worn in this kingdom, but exported, and not

be ſold but upon condition of exportation; and ſhall not be delivered out of the warehouſe, until bond be given, to the ſatisfaction of the collector, in double penalty of the goods, that the ſame ſhall be exported, and not relanded. *ſ.* 25.

If any perſon ſhall counterfeit the ſeal appointed by this act; or ſhall import any foreign cambricks or lawns having ſuch counterfeit mark thereon; or expoſe the ſame to ſale knowing the ſtamp thereon to be counterfeited; he ſhall be guilty of felony without benefit of clergy. *ſ.* 26.

All goods condemned in purſuance of this act, and all pecuniary forfeitures, (not herein otherwiſe directed,) ſhall be ſued for and recovered in any of his majeſty's courts of record at *Weſtminſter*, in the name of the attorney general, or of ſuch officer as aforeſaid; and be applied (after all charges deducted) half to the uſe of the king, and half to the officer or other perſon who, purſuant to the directions of this act, ſhall ſeize, inform, or ſue. *ſ.* 28.

And if any queſtion ſhall ariſe, where the goods were manufactured, the proof ſhall lie on the owner or claimer, and not on the officer. *ſ.* 31.

The penalties (except as is above mentioned in relation to callicoes) may be ſued for, levied, and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and ſhall be employed half to the king, and half to him that ſhall diſcover, inform, or ſue. 10 *An. c.* 19. *ſ.* 92. 24 *G.* 2. *c.* 40. *ſ.* 29. 25 *G.* 3. *c.* 72. *ſ.* 33, 34. Power of the juſtices.

And all the utenſils and inſtruments for printing, painting, ſtaining, or dying ſuch goods, in cuſtody of any the ſaid perſons, or any other to his uſe, ſhall be liable to all arrears of the duty, and to all penalties concerning the ſame, in like manner as if ſuch perſon were the lawful owner. 10 *An. c.* 19. *ſ.* 83. 25 *G.* 3. *c.* 72. *ſ.* 15. 28 *G.* 3. *c.* 37. *ſ.* 21. Utenſils liable.

XI. Malt.

1. By the 12 *An. ſt.* 1. *c.* 2. No malt ſhall be imported, on pain of forfeiting the ſame, and the value thereof. *ſ.* 26. No malt to be imported.

And by the ſame ſtatute, a duty of 6 d. a buſhel is laid upon all malt made in *England* from barley or other grain; which duty hath been continued by annual acts ever ſince. Duty on malt.

And also by the 27 G. 3. c. 13. For every bushel of *malt* made in *England* from barley or other grain, shall be paid by the maker a duty of - - £. 0 s. 0 d. $9\frac{3}{4}$

If made in *Scotland* - - 0 0 $4\frac{310}{420}$

And for every bushel of *malt* brought from *Scotland* to *England*, with a certificate from the officer that it hath paid the said duty of $4\frac{310}{420}$ d. and been entered as directed by 33 G. 2. shall be paid a duty of - 0 0 $4\frac{310}{420}$

And if brought from *Scotland* to *England* without such certificate as aforesaid, shall be paid - - - 0 0 $9\frac{3}{4}$

And if it is brought in from *Scotland* by sea, it shall be entered at the port of landing, and pay the like duty as *English* malt, unless a certificate is produced that it hath paid the duty of $4\frac{310}{420}$ d. a bushel in *Scotland*, and then it shall only pay $4\frac{310}{420}$ d. more, to make it equal with the *English:* and if it is brought by land, it shall be carried through *Berwick* or *Carlisle*, and there pay in like manner, on pain of forfeiting the same, or the value thereof; and if it is carried beyond *Berwick* or *Carlisle*, without entry or payment, the officers of excise may seize the same. 33 G. 2. c. 7. s. 10. 1 G. 3. c. 3. s. 6. 27 G. 3. c. 13. *Sched.* (F).

Licence. 2. Every *maltster* or maker of malt for sale, shall take out a licence from the office of excise annually, and pay for the same 5 s. if the quantity of malt made by him shall not exceed within the year, ending the 23d *June* in each year previous to his taking out such licence, the quantity of - 50 quarters £. s. d.

If above 50 quarters	and under 100	- -	0	10	0
If above 100 - -	and under 150	- -	0	15	0
If above 150 - -	and under 200	- -	1	0	0
If above 200 - -	and under 250	- -	1	5	0
If above 250 - -	and under 300	- -	1	10	0
If above 300 - -	and under 350	- -	1	15	0
If above 350 - -	and under 400	- -	2	0	0
If above 400 - -	and under 450	- -	2	5	0
If above 450 - -	and under 500	- -	2	10	0
If above 500 - -	and under 550	- -	2	15	0
If above 550 -	-	- -	3	0	0

And every person who shall after 25 *June* 1784, first become a maltster, shall previously take out a licence and pay the said sum of 5 s. and at the end of every year afterwards, shall

ſhall pay ſuch further additional duty hereinbefore charged, according to the quantity of malt made by him within the preceding year. And if he ſhall neglect to take out ſuch licence and renew the ſame annually, ten days at leaſt before the end of the year, he ſhall forfeit 10 l. 24 *G.* 3. *c.* 41. *ſeſſ.* 2. *ſ.* 1. 7.

But perſons in partnerſhip need only take out one licence for one houſe. *ſ.* 8.

What ſhall be deemed a buſhel.

And every round buſhel with a plain bottom, 18½ inches wide throughout, and eight inches deep, ſhall be deemed a legal *Wincheſter* buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 7.

Officers for theſe duties.

The ſaid duty ſhall be under the management of the commiſſioners and officers of exciſe. *ſ.* 3.

Places of making to be entered.

No perſon making malt (other than compounders) ſhall ſet up, alter, or uſe any ciſtern, uting fat, utenſil, or other veſſel, for the wetting or ſteeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without firſt giving notice in writing at the next office of exciſe; or ſhall keep or uſe any private ciſtern or other veſſel for the wetting his barley or corn, other than ſuch as are known and made uſe of in his common malting houſe; on pain of 50 l. *ſ.* 36.

Notice to be given of beginning to wet.

And in order that it may be aſcertained when ſuch corn is begun to be wetted or ſteeped, and to prevent frauds in mixing corn with corn ſteeping; the maltſter, within a city or market town, ſhall give 24 hours, elſewhere 48 hours notice in writing to the officer, of the hour or time of the day when he intends to wet corn or grain to be made into malt: And if he ſhall not begin, and immediately after proceed to cover the whole thereof with water, at the time mentioned in the notice, or within three hours after, the notice ſhall be void; and he ſhall be obliged to give a freſh notice before he begin. And he ſhall not begin, but between four in the morning, and nine in the evening. And if he ſhall not give ſuch notice; or having begun to wet ſuch corn, ſhall not immediately proceed to cover the whole with water, and continue the ſame covered for 40 hours; or begin to wet any but between four in the morning and nine in the evening; or after the officer hath taken account of the corn ſteeping, ſhall add any freſh corn or grain; he ſhall forfeit 100 l. 3 *G.* 3. *c.* 13. *ſ.* 1.

Officers to enter and ſurvey.

The officer ſhall in the day time be permitted, on requeſt, to enter the houſe, malt-houſe, and all other places belonging to or uſed by any maker of malt *(either for*

for sale or not for sale), and to gage all cisterns, uting fats, and other vessels used for wetting or steeping corn, and take account of the quantity; and shall thereof make return to the commissioners, or whom they shall appoint, leaving a copy with such malt-ster; and if any such malt-ster shall refuse to permit such officer, he shall forfeit 20 l. 12 *An. st.* 1. *c.* 2. *s.* 4.

And if the officer shall refuse or neglect (after demand in writing, 12 *G. c.* 28. *s.* 30.) to leave a copy of the gage for the maker, at the time of taking the gage; he shall forfeit 40 s. *s.* 31.

And by another clause in the said act, the officer shall on request be permitted, by night or by day, but if in the night then in presence of a constable, to enter the house, malt-house, and other place belonging to or made use of by any maker of malt *for sale*, common brewer, inn-keeper, victualler, distiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted; and if such maker shall refuse to permit him, he shall forfeit 20 l. *s.* 34.

Obstructing the officer.

And by a general clause in the 1 *G. st.* 2. *c.* 2. If any maker of malt for sale shall obstruct any officer of excise in the execution of any of the powers given him for securing the said duties, he shall forfeit 10 l. *s.* 4.

Manner of gaging.

The officer shall measure corn making into malt, by the gage only, and not by the bushel. 12 *An. st.* 1. *c.* 2. *s.* 17.

Time for making.

No person shall make any barley malt (except in *June*, *July*, and *August*) but that the same shall have in making thereof, that is, in the fat, floor, steeping and drying three weeks at least; nor in *June*, *July*, and *August*, but that it shall have 17 days at the least (unless it be for his own house); on pain of forfeiting for every quarter 2 s. half to the king, and half to him that shall sue: And the justices in sessions, and the steward in the leet, may hear and determine the same, as well by presentment of 12 men, as by accusation or information of two honest witnesses. 2 & 3 *Ed.* 6. *c.* 10. *s.* 2, 3, 4, 5.

Dressing of malt.

If any person shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more; he shall forfeit for every quarter 20 d. half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 *Ed.* 6. *c.* 10. *s.* 3, 4.

Mixing bad malt with good.

No person (except it be for his own house) shall mingle any malt, not well made, or made of mow burnt, or spired barley,

barley, with other good malt, and after put the ſame to ſale; on pain to forfeit for every quarter 2 s. half to the king, and half to him that ſhall ſue in like manner in the ſeſſions or leet. 2 & 3 *Ed.* 6. *c.* 10. *ſ.* 2, 3, 4, 5.

And the bailiffs and conſtables of the town where malt ſhall be made, or put to ſale, may ſearch the ſame: And if they ſhall find it to be evil made or mingled with evil malt, they ſhall with the advice of one juſtice cauſe it to be ſold to ſuch perſons, and at ſuch reaſonable prices, and under the common price of the market, as to him ſhall ſeem neceſſary and expedient. *ſ.* 4.

Preſſing malt in the ciſtern.

If any corn, in any ciſtern, uting fat, or couch, ſteeping or ſteeped, in order to the making thereof into malt by any maltſter, ſhall be found ſo hard, cloſe, and compact, as it could not be, unleſs it had been forced together to prevent its ſwelling: every maltſter and maker of malt (other than compounders) where the ſame ſhall be found, ſhall forfeit 5 s. a buſhel; and proof being made thereof, the ſame ſhall be concluſive evidence of the fact, and ſubject the maltſter to the penalty. 1 *G.* 3. *c.* 3. *ſ.* 17.

Mixing with corn of a former wetting.

No maker of malt (other than compounders) ſhall mix corn of one wetting with corn of a former wetting; or mix any of his couches or floors with corn of a former wetting, before the ſame is put on the kiln for drying; on pain of 5 s. a buſhel. 2 *G.* 2. *c.* 1. *ſ.* 11.

Mixing malt with unmalted corn.

If any dealer in malt ſhall with malt fraudulently mix any unmalted corn, or ſell or expoſe to ſale any ſuch mixture, or ſhall attempt to ſhip off any ſuch mixture, in order to export the ſame, he ſhall forfeit 5 s. a buſhel. 1 *G. ſt.* 2. *c.* 2. *ſ.* 13.

Mixing malt gaged with malt ungaged.

If any maltſter ſhall fraudulently convey, or cauſe or ſuffer to be conveyed away, from the ciſtern, uting fat, or other wetting place or utenſil, any ſteeping or part of any ſteeping of corn making into malt; and ſhall mix the ſame with any couch or floor of other corn making into malt, which is then depending and in operation, and which hath been gaged or charged with the duty in the couch, he ſhall forfeit 100 l. 1 *G.* 3. *c.* 3. *ſ.* 18.

Concealing malt to avoid the duty.

If any maker of malt ſhall fraudulently conceal any malt from the view of the gager; he ſhall forfeit 10 s. a buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 35.

Concealing malt to avoid being gaged in the couch.

If any maltſter ſhall fraudulently convey, or cauſe or ſuffer to be conveyed away, from the ciſtern, uting fat, or other wetting place or utenſil, any ſteeping or part of any ſteeping of corn making into malt, ſo that no gage thereof

thereof can be taken in the couch by the officer; he shall forfeit 100l. 1 *G.* 3. *c.* 3. *s.* 18.

Allowance for malt swelling.

Out of every 20 bushels charged by the gager, there shall be an allowance made of malt charged in the uting fat, cistern, or other vessel, wherein the same shall be found wetting or steeping, or on the floor within 30 hours after the same shall be thrown out of such vessel,——of four bushels, for the difference between the quantity when it is wet and swoln, and when it is not converted into dry malt. 12 *An. st.* 1. *c.* 2. *s.* 20.

And if any corn that hath been steeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not answer so great a quantity from the floor as from the cistern; out of every 20 bushels so charged upon the floor, there shall be allowed to the maker of the malt which shall be gaged upon the floor, after it hath been thrown out of the cistern 30 hours or more, and before it shall be dried, ten bushels, for the difference between the quantity when it is making upon the floor, and when it is dried. *s.* 28.

But if any maltster shall not wet or steep his barley or other corn, in the cistern, uting fat, or other vessel, so as the same be covered with water, and continue so covered for 40 hours before he take the water from it, he shall not be entitled to the said allowance of four bushels in every 20 as aforesaid. 33 *G.* 2. *c.* 7. *s.* 64.

Entry of malt made.

The maltster shall monthly make entry at the office of excise, of all the malt made (either for sale or not for sale) in such month; on pain of 10l. 12 *An. st.* 1. *c.* 2. *s.* 4.

Payment of the duty.

And he shall, within four months after entry, pay off the duties, on pain of forfeiting double; and after such default, he shall not sell or carry out any malt until the duty is paid, on pain of double value. *Id. s.* 6. 1 *G. st.* 2. *c.* 2. *s.* 8.

Drawback of the duty for malt damaged.

After the duty is paid, if any quantity shall be damaged by the sinking of the vessel in which the malt shall be transported from one part of the kingdom to another; the justices shall at the next sessions, on proof of such damage and of the payment of the duty, settle the quantity of the damage, and the allowance to be made in respect thereof, and give a certificate of the sum allowed, which shall bear the same proportion to the whole duty, as the damage shall bear to the value of the malt; on producing of which certificate, the officer shall repay or allow to the proprietor the sum certified. 12 *An. st.* 1. *c.* 2. *s.* 14.

But

But where such loss shall happen, the person who shall sustain the same, shall three days before the next sessions leave notice thereof in writing with the collector of the district where the loss shall happen, and of his intention of applying to the said sessions. *s.* 15.

After the duty is paid, if any malt shall be destroyed by fire, by burning of the place where it is kept; or perish by water, by casting away of the vessel in which it is transported; the owner may make proof thereof by two witnesses on oath, and of his having paid the duty, at the next quarter sessions, where such accident shall happen; who shall grant a certificate of such loss, on producing of which, the duty shall be repaid. *s.* 27. Drawback for malt perished.

But by several acts power was given to the officers to compound for the duties upon malt to be consumed in private families at 7 s. 6 d. a head by the year; but this having been found to be the occasion of great frauds, this power is abolished by 23 *G.* 3. *c.* 64. Compounding.

No malt entered and made for exportation only, shall be liable to the duties; and no drawback shall be allowed for any malt exported. 12 *G.* *c.* 4. *s.* 48. 33 *G.* 2. *c.* 7 *s.* 14. Making malt for exportation.

But the maker shall be allowed, in consideration of his extraordinary charge and trouble, 3 d. for every quarter made for exportation. 12 *G.* *c.* 4. *s.* 59. 27 *G.* 3. *c.* 13. *Sched.* (F).

And by the 1 *G.* 3. *c.* 3. There shall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters of malt, and no more, on exportation, though by steeping it shall run out into any greater quantity. *s.* 9.

And the maker, before he shall begin to wet or steep any steeping of corn to be made into malt for exportation, shall leave notice in writing with the officer, of the quantity of corn intended to be contained in each steeping, on pain of 50 l.; and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5 s. a bushel. 12 *G.* *c.* 4. *s.* 49, 58.

And no maker of malt shall begin to wet corn to make into malt for exportation, above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption, above six days before all the corn on his floors for exportation be dried and locked up; on pain of 5 s. a bushel. *s.* 50.

And the maker ſhall keep the whole quantity of his corn making into malt for exportation, of one ſteeping or wetting, when the ſame ſhall be on the kiln, or after it ſhall be taken off the kiln, ſeparate from any former ſteeping or wetting, until it hath been meaſured in preſence of the officer, on pain of 50 l. 3 G. 2. c. 7. ſ. 16.

And the officers, during the ſteeping of the corn ſo intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its operations, as in caſe the duties were to be charged thereon. 12 G. c. 4. ſ. 52.

And perſons oppoſing the officers in the execution of this act, ſhall forfeit 50 l. 12 G. c. 4. ſ. 58.

And the ſaid maker ſhall give notice in writing to the officer, or leave notice at the next exciſe office, of the hour when he intends to take any malt off the kiln, that he may attend the meaſuring; and after it has been meaſured, it ſhall (on pain of 50 l.) be immediately carried on ſhipboard, or elſe into ſtorehouſes, to be provided by ſuch maker, to be there kept apart from all other malt, under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the ſame be delivered out for exportation. 12 G. c. 4. ſ. 51. 58. 3 G. 2. c. 7. ſ. 17.

And if he, or any perſon with his privity, ſhall open ſuch lock, or make other entrance into the place, or carry any of it away, without conſent of the officer, or notice given to him, he ſhall forfeit 100 l. 3 G. 2. c. 7. ſ. 18.

And when any maker or proprietor ſhall be deſirous to take away any of the malt for exportation, and ſhall thereof give notice in writing to the officer 40 hours before the time he ſhall deſire to take out the ſame, expreſſing in ſuch notice the quantity of the malt, and the port to which it is to be removed; the officer ſhall attend at the place where the malt is locked up, and ſee it meaſured and delivered out. 12 G. c. 4. ſ. 53.

And the officer ſhall keep an account of the malt ſo delivered out, and of the perſon to whom it belongs, and ſhall give ſuch perſon a certificate to the officer of the diviſion to which it is intended to be removed, who ſhall file the ſame, and make an entry thereof; and if the proprietor ſhall neglect to deliver ſuch certificate, he ſhall forfeit 50 l. ſ. 54.

And perſons intending to ſhip malt for exportation, ſhall give at leaſt 48 hours notice, before they begin to put it

it on board, to the officer of the port in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5 s. a bushel. *s.* 57.

And during the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked, from the time the ships shall be loaded till they be ready to sail. *s.* 56.

And persons breaking open the hatches of any ship so locked up, shall forfeit 50l. *s.* 58.

And the officers may not only attend the measuring of such malt, but continue on board the ship till they be cleared of their ports. *s.* 55.

And it shall be relanded after shipping for exportation, besides the penalty of the bond which shall be given for its exportation, the same shall be forfeited, and treble the value. 1 *G.* 3. *c.* 3. *s.* 11.

And the maker who shall use any such storehouse for keeping of malt for exportation, shall every nine months after the last clearing, clear out the same on pain of 50l. 3 *G.* 2. *c.* 7. *s.* 20.; or 5s. a bushel. 12 *G.* *c.* 4. *s.* 57. And by the 1 *G.* 3. *c.* 3. he shall clear out in 15 months; on pain of 50l. *s.* 15, 16.

And if any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5 s. a bushel. 6 *G.* *c.* 21. *s.* 4.

And if ground malt shall be exported, it shall be computed at so many bushels as it contained before it was ground. 12 *An.* *st.* 1. *c.* 2. *s.* 30.

Power of the justices.

The penalties relating to this article (except where it is otherwise above directed) shall be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and be employed half to the use of the king, and half to him that shall sue. *Id.* *s.* 9. 24 *G.* 2. *c.* 40. *s.* 29.

Appeal.

Persons aggrieved by any judgment of the justices, may appeal to the next quarter sessions, giving six days notice in writing: but if there be not six days between the order of the justices and the sessions, the appeal may be at the second sessions. 12 *An.* *st.* 1. *c.* 2. *s.* 37, 38. 1 *G.* 2. *st.* 2. *c.* 16. *s.* 3.

And the sessions may award costs to either party, to be levied by warrant of the justices or two of them, on the goods of the party. 12 *An.* *st.* 1. *c.* 2. *s.* 38.

And

Certiorari.

And no *certiorari* shall be allowed, to set aside any order of the justices. *s.* 37.

Malt liable to the duties and penalties.

And all malt in custody of the maker shall be liable to the duties and penalties in the same manner as if he were the lawful owner. *Id. s.* 10. 28 *G.* 3. *c.* 37. *s.* 21.

MUM. See EXCISE. (*Ale.*)

XII. Paper.

Exportation.

Paper which hath paid the duty may be exported, and also books; and drawbacks are to be allowed, subject to the regulations in this and former acts relating to the exportation of paper. 26 *G.* 3. *c.* 78. *s.* 19. 34 *G.* 3. *c.* 20. *s.* 28, 29, 30, 1, 2, 3, 4.

And the officer who shall attend to see the same packed in order to be exported, shall take off the stamps from each ream or bundle; and if any person shall obstruct him herein, he shall forfeit 50 l. 26 *G.* 3. *c.* 77. *s.* 5.

Importation.

And by 27 *G.* 3. *c.* 13. certain duties were imposed on paper imported; but by 34 *G.* 3. *c.* 20. those duties are repealed, and other duties granted in lieu thereof. *s.* 1.

But old rags, old ropes, or junks, or old fishing nets, may be imported duty free. 11 *G.* *c.* 7. *s.* 10.

Importing printed, painted, or stained paper.

And by 32 *G.* 3. *c.* 54. the officers of the customs, where any printed, painted, or stained paper shall be imported, shall cause the same to be marked, and shall provide proper frames and stamps, and such numbers or marks, as they shall think fit; and if any person shall counterfeit or forge any frame, number, or mark, or the impression of the same upon any such paper, he shall forfeit 100 l. or shall counterfeit or forge any stamp or seal so provided, or counterfeit or resemble the impression of the same, thereby to defraud his majesty, he shall forfeit 500 l.: And if any person shall sell any printed, painted, or stained paper with such counterfeit stamp, knowing the same, he shall forfeit 50 l. *s.* 1.

And if any person shall wilfully cut out, obliterate, or deface any such frame mark, number, or mark, or suffer the same to be done, he shall forfeit 50 l. for every piece. *s.* 2.

And if any person shall fraudulently affix upon any such piece of paper, any frame mark, stamp, or seal which hath been before used, he shall forfeit 50 l. and also every such piece of paper. *s.* 3.

And

And after 1st *Aug.* 1792, if any person shall make oath before two commissioners within their limits, or elsewhere before one justice, that he hath reason to suspect, that any foreign imported printed, painted, or stained paper, for which a duty ought to have been paid, is in the custody of any paper stainer, or person dealing therein, or other person for his use, without having such stamps or seals as aforesaid; they may authorize any officer of the customs or excise, with the assistance of a constable, in the day time, to search for the same; and to open doors, chests, trunks, and packages, and the paper so found unstamped shall be forfeited, and may be seized by any officer of the customs or excise. Provided always, that no remnant or piece of such paper, being of less length than expressed by such frame mark so found, having such stamp or seal as aforesaid at one end thereof, shall be forfeited, by reason of not having such stamp or seal at both ends thereof: And if any person shall obstruct any of the said officers in the execution of their duty herein, he shall forfeit 50l. *s.* 4.

And to prevent frauds in adding to any piece or remnant of such paper, after the same hath been stamped or sealed, and also to prevent the importation of any such paper without being stamped or sealed as aforesaid; if any piece or remnant of such foreign imported paper, not having such frame mark and stamp thereon as aforesaid, (or having the same at one end, or both ends thereof, and being of a greater length by half a yard or more than by such mark is expressed,) shall be found in the possession of any printer, painter, or stainer of paper, or dealer therein, the same shall be forfeited, and may be seized in manner aforesaid; and the person in whose possession the same shall be found, shall also forfeit 50l. *s.* 5.

All penalties and forfeitures by this act imposed may be sued for, recovered, levied, or mitigated as by the laws of excise, or in the courts at *Westminster*, half to the king, and half to him who shall sue. *s.* 6.

Importing books for sale first printed in this kingdom and re-printed in any other.

And by 34 *G.* 3. *c.* 20. if any person shall import for sale any books first composed, written, or printed and published in this kingdom, and re-printed in any other country; or shall knowingly sell, publish, expose to sale, or have in his possession for sale any such book; he shall forfeit the same and also 10l. and double the value of such book, which may be seized by any officer of the excise and customs, and the same shall be forthwith made waste paper. *s.* 57.

Provided, that this shall not extend to any book that has not been printed or re-printed in this kingdom within 20 years before the same shall be imported, nor to any book re-printed abroad and inserted among other books or tracts to be sold therewith in any collection where the greatest part thereof shall have been first composed or written abroad. *s.* 57.

Licence. And by 24 *G.* 3. *c.* 41. *sess.* 2. every *paper-stainer*, or *maker of paper*, shall take out a licence from the office of excise, for which he shall pay 2 *l.* and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 20 *l.* *s.* 1. 7.

Persons in partnership. But persons in partnership need not more than one licence for one house. *s.* 8.

Former duties repealed. By 34 *G.* 3. *c.* 20. *s.* 53. the 21 *G.* 3. *c.* 24. for granting duties upon paper, &c. is repealed.

And by 27 *G.* 3. *c.* 13. and 27 *G.* 3. *c.* 31. certain duties were imposed on paper made in *Great Britain*, which duties, by 34 *G.* 3. *c.* 20. *s.* 1. are repealed; except the duties on paper *printed*, *painted*, or *stained* in *Great Britain* to serve for hangings and other uses.

Exceptions.

Duty on paper made in Great Britain. And in lieu thereof the following duties shall be paid:

	£.	s.	d.
For every pound weight avoirdupois of paper, fit or proper, or that may be used for *writing*, *drawing*, or *printing*; *elephant papers*, and *cartridge papers*, made in *Great Britain*; an excise duty of - - -	0	0	2½
For every pound weight of *coloured papers*, and *whited brown papers*, (except elephant and cartridge papers, fit for wrapping up goods, and not fit for, or capable to be used for writing, drawing, or printing; a duty of -	0	0	1
For every pound weight of *brown paper* fit for wrapping up goods, and not fit for, or capable to be used for writing, drawing, or printing; a duty of - -	0	0	0½
For every pound weight of every other sort or kind of paper, not hereinbefore enumerated or described, (except papers commonly called *sheating paper*, and *button paper*, or *button board*); a duty of - - -	0	0	2½
For every hundred weight, (and so in proportion for a greater or lesser quantity) of *pasteboard*, *millboard*, and *scaleboard*; a duty of - - - -	0	10	6

For

For every hundred weight (and so in like proportion) of *glazed paper* for *clothiers* and *hot-pressers*; a duty of £. s. d. - - 0 6 0

Which said duties shall be paid by the makers thereof respectively; and shall be under the management of the commissioners of excise. *s.* 2, 3.

Duties to be paid by the maker; and to be under the commissioners of excise.

And all paper, proper either for writing, drawing, or printing; elephant papers, and cartridge papers made in *Great Britain*, shall be denominated papers of the first class: all coloured papers and whited brown papers, (not being elephant or cartridge papers,) proper for wrapping up goods, and not capable of being used for writing, drawing or printing; shall be denominated papers of the second class: and all brown paper, proper for wrapping up goods, and not capable of being used for writing, drawing or printing; shall be denominated paper of the third class: and every other sort of paper, not enumerated or described in any of the three classes aforesaid (except papers called sheating paper, and button paper, or button board); shall be denominated papers of the fourth class: and all pasteboard, millboard, scaleboard, and glazed paper for clothiers, and hot pressers; shall be denominated paper of the fifth class. *s.* 4.

The different classes of paper.

And every maker, before he shall begin, shall make entry in writing at the next excise office, of every mill, workhouse, or other place by him made use of for making, drying, or keeping paper, or materials proper to be made into paper; and of all vats, presses, utensils or vessels used, or intended to be used in making the same; on pain of forfeiture thereof, and also 50 l. *s.* 5.

Places of making or keeping to be entered.

And all such paper shall be made up by the maker into *quires*, to consist of twenty-four sheets each; which shall immediately be made up into *reams* or *bundles*, each such ream to consist of twenty such quires; and each such bundle to consist of forty such quires; and all such pasteboard, millboard, scaleboard, and glazed paper respectively, shall be immediately made up into *parcels*, each such parcel to contain even dozens of sheets, and not less than twenty-four, nor more than seventy-two sheets to each parcel; and all quires, reams, and bundles of paper, and all parcels of pasteboard, millboard, scaleboard or glazed paper, shall be deemed to consist of such quantities respectively, and of no other; and if any such maker shall make up the same contrary to the directions aforesaid, he shall forfeit the same, and also 50 l. for every such offence. *s.* 6.

Paper, &c. to be made up in certain quantities.

Notice of weighing.

And every maker whoſe mill or workhouſe is ſituate in any city or market town, who ſhall have any paper, paſteboard, millboard, ſcaleboard, or glazed paper to be weighed and charged with the duty, ſhall give twenty-four hours (elſewhere forty-eight hours) previous notice in writing to the officer of exciſe, who ſhall attend; and ſuch maker or his ſervant ſhall produce to ſuch officer the whole thereof tied up in the manner following, (viz.) all ſuch paper ſhall be incloſed and tied up with ſtrong thread or ſtring in covers, containing one ream or bundle each, and not more or leſs; and all ſuch paſteboard, millboard, ſcaleboard and glazed paper, ſhall be tied up with ſtrong thread or ſtring in ſuch parcels as aforeſaid; and the different parts of ſuch thread or ſtring ſhall paſs over and acroſs each other at the middle of the ream or bundle; and where the different parts of ſuch ſtring ſhall croſs each other, the ſame ſhall be paſſed from thence over and acroſs the ends and ſides of ſuch ream or bundle; and on each cover, there ſhall be already marked, written or printed by the maker, in large and legible characters, and in words at length, the claſs of the paper incloſed in each ſuch cover, diſtinguiſhing in which of the aforeſaid four firſt claſſes, the duty is chargeable, together with the number of ſuch ream or bundle, according to the numbers of each ſuch claſs made at ſuch mill, during the then current quarter of a year, to be computed from the 5th *January*, 5th *April*, 5th *July*, or 10th of *October* as the caſe may require in each year, ſuch number to be taken progreſſively, beginning at one, and ſo onwards according to the number of reams or bundles of each ſuch claſs, made at ſuch mill in each ſuch quarter; and on each ſuch parcel of paſteboard, millboard, ſcaleboard and glazed paper ſhall be marked in like manner, before it be produced to the officer, a deſcription of ſuch parcel, and whether it is paſteboard, millboard, ſcaleboard, or glazed paper, and the number of ſheets in each parcel, together with the progreſſive number of ſuch parcel made by ſuch maker at ſuch mill, during the then current quarter, commencing as aforeſaid: and if ſuch maker ſhall not, at the time mentioned in ſuch notice, produce to ſuch officer, all the paper, paſteboard, millboard, ſcaleboard and glazed paper, for which any duty is to be charged, tied up, and the proper claſs, and other matters hereinbefore deſcribed marked thereon; ſuch notice ſhall be void, and he ſhall be obliged to give a freſh and like notice before any account ſhall be

taken or the duty charged, and before he shall remove the same from the mill where made. *s.* 7.

And the commissioners of excise shall provide stamps. And if any person shall counterfeit any such stamps; or shall counterfeit, forge, or resemble the mark upon any cover, wrapper, or label affixed to any quantity of paper; or shall knowingly have in his possession any counterfeit stamps, or shall sell any such paper with a counterfeit or forged stamp thereon, knowing the same; or shall put any cover upon any such parcel or bundle which has not been duly entered, or shall use any cover or wrapper which has been used before; then, in every such case, every such offender shall forfeit 500 l. *s.* 8, 9.

Stamps to be provided, and penalty of counterfeiting the same, or selling with forged stamps.

And as soon as such officer is satisfied that the conditions herein specified have been complied with, he shall affix on every such bundle or parcel, a proper label to denote the duty being so charged, and shall write his name upon each, together with the day on which the duty was charged. And if any person shall wilfully deface or alter the same, or any part thereof, he shall forfeit 50 l. for every such offence. *s.* 10.

Directions for stamping paper.

Defacing marks

And any officer may open any such ream or bundle of paper, and take out a sample, not exceeding one sheet out of each quire (paying a market price for the same if demanded); and if he shall discover therein any paper of a different class than that which shall be denominated on the cover, the same shall be forfeited and may be seized, and the person who shall have marked any such false class, shall forfeit 50 l. for every such offence. *s.* 11.

Officers may take samples.

And every such maker shall once in every six weeks, make entry in writing at the excise office, which entry shall contain the quantity of paper made; and also the classes of all such paper according to the four classes aforesaid; and the number of reams and bundles of such paper, and the weight of each; and also the number, quantity, and weight of such bundles or parcels of paper in the fifth class as aforesaid, made by him within such six weeks, on pain of forfeiting 10 l. which entries shall be verified upon oath (to be administered by the officers of excise without fee) by the maker or his chief workman: Provided that no such maker shall be obliged to go further than the next market town, for the making of such entry. *s.* 12.

Entries to be made every six weeks.

And every maker shall, within six weeks after he shall make or ought to have made such entry, pay the duties, on pain of forfeiting double duty. *s.* 13.

And duties to be paid.

Paper not to be removed until an account be taken.

And no maker shall remove from the mill where the same shall be made, any paper or articles aforesaid, until such officer shall have taken an account thereof; nor in any less quantity than a ream or bundle, nor without having thereon the cover in which the same was charged with the duty: nor shall remove any such pasteboard, millboard, scaleboard or glazed paper in any less quantity than the entire parcel in which the duty was charged, nor until weighed and charged, and stamped, marked, and labelled as aforesaid; and the cover stamped, and the officer's name, together with the day and year when the duty was charged, and the several matters and things herein before prescribed marked on such cover; on pain of forfeiting the same, and also 50 l. for every such offence, together with the package containing the same, and the horses, cattle, carriages, boats, barges, or other vessels used in removing thereof; which may be seized by any officer of excise. 24 *G.* 3. *c.* 18. *sess.* 2. *s.* 5. 34 *G.* 3. *c.* 20. *s.* 14.

When to be removed after weighing, and to be kept separate.

And no maker shall remove any paper or articles aforesaid from the place where the same was weighed, and the duty carged, in less than twenty-four hours; and shall keep such as have been weighed separate for twenty-four hours, unless sooner re-weighed by the surveyor or supervisor, to the end that the same may be re-weighed by such surveyor or supervisor after such officer; and if, upon re-weighing, any additional weight shall be found, the same shall be charged with the duty according to such last-mentioned weight; and if any such maker shall offend herein, he shall forfeit 50 l. for every such offence. 34 *G.* 3. *c.* 20. *s.* 15.

May be removed from one mill to another on giving notice.

Provided nevertheless, that nothing herein shall extend to prevent any maker from sending paper from the mill where made, upon giving forty-eight hours notice in writing to the officer, to any other mill to be sized and finished, in order that such officer may attend and take an account thereof; and provided that the same be removed with a proper certificate from such officer; and, when so removed to such mill, the same shall be under the like directions, as to stamping and other matters, as if it had been finished at the mill where made; and such maker shall, for the breach of any of the directions aforesaid, be subject to the like penalty, as he would have been, if such paper had not been removed. *s.* 16.

Paper stamped to be kept separate.

And every maker shall keep all paper which hath been charged and stamped, apart from all paper which hath not been

been charged and ſtamped; and alſo, all paper of one claſs ſeparate from paper of another claſs; on pain of forfeiting 50 l. for every ſuch offence. *ſ.* 17.

Officers may enter and take an account.

And any officer of exciſe may, by day or night, (but if in the night then in the preſence of a conſtable,) enter into any mill, workhouſe, or other place entered or made uſe of by any maker for making, keeping, or drying paper, or materials proper to be made into paper, and by weighing, tale or otherwiſe, may take an account of the kinds and quantities of paper which ſhall have been made, and ſhall make a report thereof in writing to the commiſſioners of exciſe, or whom they ſhall appoint, leaving a copy of ſuch report under his hand with ſuch maker (if demanded in writing); and ſuch report ſhall be a charge upon ſuch maker; and if ſuch officer ſhall refuſe to give or leave a copy of his report in writing at the time of taking ſuch account (being demanded as aforeſaid), he ſhall, for every ſuch offence, forfeit 40 s. to ſuch maker. *ſ.* 18.

Maker to keep ſcales and weights.

And every maker ſhall keep ſcales and weights, and ſhall permit ſuch officer to uſe the ſame; and if he ſhall provide or uſe any falſe ſcales or weights, or practiſe any deviſe to prevent ſuch officer from taking the true weight; he ſhall, for every ſuch offence, forfeit 100 l. together with ſuch inſufficient ſcales and weights, which may be ſeized by any officer of exciſe. *ſ.* 19.

And to aſſiſt in weighing.

And every maker, when required by ſuch officer, ſhall, with a ſufficient number of his ſervants, aſſiſt in weighing and taking an account; on pain of forfeiting 50 l. *ſ.* 20.

Turn of the ſcale.

And in weighing, the turn of the ſcale ſhall be in favour of the crown, and in lieu thereof there ſhall be allowed to the maker 2 lb. upon every 100 l. and ſo in proportion for a greater or leſſer quantity. Provided, that no weight leſs than 1 lb. ſhall be uſed; on pain of forfeiting ſuch allowance. *ſ.* 21, 22.

Not leſs than 1 lb. to be uſed.

Paper, &c. fraudulently hid to be forfeited.

And in caſe any paper or articles aforeſaid ſhall be fraudulently hid or concealed, with intent to defraud his majeſty of the duties, the ſame ſhall be forfeited, together with the package containing the ſame, which may be ſeized by any officer of exciſe. And the better to enable any ſuch officer to diſcover the ſame, if he ſhall ſuſpect that any ſuch paper is hid or concealed in any place within the limits of the chief office in *London*, upon oath made before two commiſſioners or one juſtice for the county, city, or liberty where ſuch place ſhall be; or if in any other part of *Great Britain*, then before one juſtice of the county or place where ſuch officer ſhall ſuſpect the ſame to be depoſited;

Officers may ſearch.

ſited; ſuch commiſſioners or juſtice may, if they judge it reaſonable, by ſpecial warrant, empower ſuch officer by day or night, (but if in the night in the preſence of a conſtable,) to enter ſuch ſuſpected place, and to ſeize and carry away all ſuch paper, &c. as they ſhall there find ſo forfeited, together with the package containing the ſame; and the perſon in whoſe cuſtody the ſame ſhall be found, ſhall alſo forfeit 50l. *ſ.* 23.

Stationers not to receive paper but in an entire ream, &c.

And no ſtationer or dealer in paper ſhall receive into his poſſeſſion any paper made in *Great Britain*, which ſhall not, at the time of receiving it, be an entire ream or bundle, and incloſed in a cover or wrapper ſtamped as aforeſaid, together with the officer's name and day when the duty was charged, and the claſs marked thereon; on pain of forfeiting 50l. together with ſuch paper, which may be ſeized by any officer of exciſe. *ſ.* 24.

Wrappers not to be returned, but to be deſtroyed.

And no ſuch ſtationer, dealer, or other perſon, ſhall return to any maker, nor to any mill, workhouſe, or other place for the uſe of ſuch maker, any wrapper or cover which has been before uſed; but the ſame ſhall, upon opening any ſuch ream or bundle, forthwith be deſtroyed: and no ſuch maker ſhall receive or ſuffer to be returned to him, or to be kept at any mill, workhouſe, ſtorehouſe, room, or other place to him belonging, or at any other place for his uſe, any ſuch wrapper, cover, or label which has been before uſed; on pain of forfeiting 100l. together with ſuch wrapper, cover, or label, which may be ſeized by any officer of exciſe. *ſ.* 25.

Not to extend to paper opened and returned as diſliked.

Provided, that nothing herein ſhall extend to any wrapper or cover which hath been opened, containing therein the ſame identical ream or bundle of paper which was ſent, and is returned on account of being diſliked and refuſed by the perſon to whom the ſame was ſent. *ſ.* 26.

Paper and utenſils, &c. liable to the duty.

And all paper, paſteboard, millboard, ſcaleboard and glazed paper, and all materials and utenſils for the making thereof in the cuſtody of the maker, or other perſon in truſt for him, ſhall be liable to and chargeable with all debts and duties for paper in arrear and owing by ſuch maker, and ſhall alſo be ſubject to all penalties and forfeitures incurred for any offence againſt this act. *ſ.* 27. 28 *G.* 3. *c.* 37. *ſ.* 21.

Proof of the paper being of the claſs marked to lie on the owner.

And if any queſtion ſhall ariſe whether any paper is belonging to the claſs marked on the cover or wrapper, (although ſuch paper ſhall appear to have been entered in the officer's books as belonging to ſuch claſs,) the proof there-

of

of ſhall lie on the owner, by the oaths of two ſkilful and experienced witneſſes. 34 *G.* 3. *c.* 20. *ſ.* 35.

Obſtructing officers.

And if any perſon ſhall aſſault, oppoſe, moleſt, obſtruct, or hinder any officer in the due execution of this act, he ſhall forfeit 100*l.* *ſ.* 36.

Oxford and Cambridge.

Books printed at *Oxford* or *Cambridge*, in Latin, Greek, Oriental, or Northern languages; and alſo Bibles, Teſtaments, Pſalm Books, or Books of Common Prayer, printed either in thoſe univerſities, or by the king's printer, ſhall have drawbacks allowed on certain conditions. *ſ.* 37. 39, 40, 41.

Paſteboard not liable to further duty.

Provided always, that paſteboard made wholly of paper which hath paid the duty, ſhall not be charged with any further duty upon the ſheets being paſted together. *ſ.* 42.

This act not to alter 32 G. 3. c. 54.

Provided, that nothing herein ſhall entend to alter or affect the proviſions contained in 32 *G.* 3. *c.* 54. *ſ.* 47.

Counterfeiting or forging ſtamps, &c.

And if any perſon ſhall counterfeit any ſtamp, or counterfeit or forge any ſtamp, mark, or ſeal upon any parcel of paper; or knowingly have any ſuch in his poſſeſſion; or ſhall knowingly ſell or have in his poſſeſſion any paper marked with a counterfeit or forged ſtamp; or put the ſame upon any foreign paper, which has not been duly entered; or ſhall affix upon any ream or quantity of paper any ſtamp which hath been before uſed; he ſhall forfeit 500*l.* *ſ.* 48.

Allowance to be made on paper damaged.

And if any ſuch paper, paſteboard, millboard, ſcaleboard or glazed paper, for which the duty hath been paid, ſhall be damaged by the caſting away or ſinking of the veſſel in which the ſame ſhall be tranſported from one part of this kingdom to another, the juſtices where ſuch accident ſhall happen ſhall at the next quarter ſeſſions, upon proof of ſuch damage, and of payment of ſuch duties as aforeſaid, determine the quantity of damage done to ſuch paper, and the allowance to be made in reſpect thereof; and ſhall give a certificate under their hands and ſeals, or two of them preſent at ſuch ſeſſions, of the ſum allowed; which allowance ſhall bear the ſame proportion to the whole of the duties ſo paid, as the ſaid damage ſhall appear to bear to the value of ſuch paper before the ſame was ſo damaged; and upon producing of which certificate to the officer, he ſhall repay or allow to the proprietor of ſuch paper out of the duties paid for the ſame, ſo much money as the ſum certified by the ſaid juſtices ſhall amount unto; or in default, ſuch proprietor may deduct the ſame, out of any ſubſequent monies becoming due for paper made by him. *ſ.* 49.

Provided

Notice of application for such allowance.

Provided always, that the perſon who ſhall ſuſtain ſuch loſs, ſhall, three days before ſuch ſeſſions, give or leave notice in writing thereof with the collector of the diſtrict, and of his intention of applying to ſuch ſeſſions. *ſ.* 50.

Duty on painted paper.

And by 27 *G.* 3. *c.* 13. for every yard ſquare of paper which ſhall be *printed*, *painted*, or *ſtained*, in *Great Britain*, to ſerve for hangings or other uſes, (over and above the duties payable for ſuch paper before the printing thereof,) ſhall be paid by the printer, painter, or ſtainer 1¾d.

Paper ſtainer to enter his name and place of abode.

By 10 *An.* *c.* 19. all perſons who ſhall *print*, *paint*, or *ſtain any paper* for ſale, or not for ſale, ſhall leave notice in writing at the next exciſe office, of his name and place of abode, and of the places uſually made uſe of in making the ſame; on pain of forfeiting 30l. *ſ.* 43.

And no perſon ſhall uſe any drying place, or other place for making the ſame fit for uſe, other than ſuch of which he hath given notice in writing to the officer; on the penalty of 20l. *ſ.* 44.

Officers to take an account;

And the officer ſhall be permitted to take an account of all paper in the poſſeſſion of any one uſing, ſtaining, painting, or printing paper; and if hindered, the offender ſhall forfeit 20l. *ſ.* 50.

and ſhall mark every ſheet.

And before any paper ſhall be printed, painted, or ſtained, the officer ſhall be permitted to take an account of the quantities and dimenſions of all paper in the poſſeſſion of any ſuch ſtainer; and ſhall mark every ſheet and piece with a ſtamp, to denote that ſuch account has been taken. 1 *G.* *c.* 36. *ſ.* 17.

And to make entry of paper.

And after *Sept.* 1ſt, 1786, every paper ſtainer ſhall, once in every fortnight, make entry in writing, upon oath, or on the oath of his chief workman, at the next office for the ſaid duties, of all paper by him printed, painted or ſtained, within that time, and ſuch entry ſhall contain the kinds and quantities thereof reſpectively; on pain of 50l. 26 *G.* 3. *c.* 78. *ſ.* 2.

Duties to be paid.

And every ſtainer ſhall, within a fortnight after, pay the duties for all ſuch paper, on pain of forfeiting double duty: and no perſon, after default in payment, ſhall ſell or deliver out any paper, until he hath paid the duty, on pain of forfeiting double the value thereof. *Id.* *ſ.* 3.

Mark on paper before painting.

And before any paper ſhall be printed, painted, or ſtained, the officer ſhall be permitted to take account of the dimenſions, and ſhall ſtamp or ſeal every ſheet and piece, to denote that ſuch account hath been taken: and where a ſingle ſheet ſhall be painted, the ſame ſhall be produced to the officer, who ſhall take an account thereof; and if

he

he find that every ſheet is marked or ſtamped, he ſhall meaſure the ſame; and mark ſuch ſheet at both ends, with a frame mark, denoting the meaſure thereof, and with ſuch other number or mark as the commiſſioners ſhall direct: And if any perſon ſhall begin to print, paint, or ſtain any ſheet of paper before it is ſo meaſured and marked, he ſhall forfeit 20l. and alſo ſuch paper, which may be ſeized. *Id. ſ.* 5. To be meaſured.

And as ſoon as any paper ſhall have been printed, painted, or ſtained, with any colour or figure, the officer ſhall take an account and charge the duties, and ſhall ſtamp every piece where a ſingle ſheet, at both ends: And if any ſuch ſtainer ſhall remove or ſend away any piece or ſheet of ſuch paper before the ſame has been taken account of and ſtamped as aforeſaid, he ſhall forfeit 50l. and alſo ſuch paper, which may be ſeized. *Id. ſ.* 9. To be marked after painting.

And if any officer ſhall miſs any quantity of paper, whereof he had ſo taken an account, and ſhall not, on reaſonable demand, receive ſatisfaction what is become of it, he may charge the duties for it. 1 *G. ſt.* 2. *c.* 36. *ſ.* 17. 26 *G.* 3. *c.* 78. *ſ.* 10. Officers to charge for paper miſſing.

And pieces cut into ſamples or remnants, ſhall be ſtamped by the officer, to whom ſix hours notice ſhall be given by ſuch ſtainer, of the time he intends to cut the ſame. 26 *G.* 3. *c.* 78. *ſ.* 8. Pieces cut into ſamples.

And no perſon ſhall remove any ſuch painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel ſhall be marked or ſtamped; on pain of 20l.: And the ſaid paper being found in the poſſeſſion of any ſtationer or other dealer, or other perſon for his uſe, ſhall alſo be forfeited. 1 *G. ſt.* 2. *c.* 36. *ſ.* 18. Not to be removed until an account is taken.

And every ſtainer ſhall keep all paper by him printed, painted, or ſtained, and which hath not been ſtamped and charged with the duties, ſeparate from the paper that hath been charged, on pain of 50l. 26 *G.* 3. *c.* 78. *ſ.* 11. Paper unſurveyed to kept ſeparate.

And if any ſtainer ſhall fraudulently hide or conceal any printed, painted, or ſtained paper, with intent to defraud his majeſty; he ſhall forfeit 100l. *Id. ſ.* 12. Concealing paper.

And no ſtainer ſhall keep any paper which hath been marked and ſtamped in any unentered place: And if any paper which hath been printed, painted, or ſtained, whether marked or ſtamped, or not, ſhall be found in the poſſeſſion of any ſtainer in ſuch unentered place, he ſhall forfeit 50l. and alſo the paper, which may be ſeized. *Id. ſ.* 16. Keeping paper in unentered places.

And

Suspected places may be searched.

And upon oath made before two commissioners, or one justice, by any person, that he hath reason to suspect or believe, that any such paper is in the custody of any stainer, or other person trading therein, without having thereupon such stamp as by this act directed; the said commissioners or justice may issue their warrant or order, authorising any officer for the said duties, with the assistance of a constable, in the day time, to search for the same, and to open doors, chests, trunks, and packages, and to seize such paper, and to bring the same to the next excise office, which shall be forfeited: and if any person shall obstruct or hinder any such officer, from entering any such place, and in seizing and carrying away such paper; he shall forfeit 50l.—Provided, that no remnant, being of less length than shall be expressed by the frame mark thereon, so found having the stamp at one end thereof, shall be forfeited by reason of not having the stamp at both ends thereof. *Id. s.* 17.

Paper marked at one end only, forfeited.

And to prevent fraud by adding to the length of any piece of stained paper, after the same hath been stamped at both ends; if any piece or remnant of stained paper, not having such stamp and frame mark thereon, or at one end thereof only, and being of as great or greater length than shall be expressed by such frame mark; or having such marks at both ends thereof, shall be of a greater length by half a yard or more than expressed by such frame mark; the same shall be forfeited, and may be seized, and the stainer or dealer in whose possession the same is found, shall forfeit 50l. *s.* 18.

Counterfeiting or forging stamps, &c.

And if any person shall counterfeit or forge any frame, number, or mark used by the officers, or the impression of the same upon any paper to be printed, painted, or stained, he shall forfeit 100l.: Or shall counterfeit or forge any stamp or seal to resemble those provided in pursuance of this act, or the impression of the same upon any paper in order to defraud his majesty, he shall be guilty of felony without benefit of clergy: And if any person shall sell any paper with such counterfeit stamp, knowing the same, with like intent, he shall forfeit 100l. *s.* 13.

Defacing marks.

And if any stainer shall wilfully cut out, obliterate, or deface any such mark or stamp, or wilfully suffer the same to be done; or shall by any means or contrivance affix upon any piece of paper, any frame mark or stamp, which shall have been before affixed on any other piece of paper, with intent to defraud his majesty, he shall forfeit 50l. *s.* 14, 15.

Printed,

Printed, painted, or ſtained paper may be exported on certain conditions ſpecified in the act; but the ſame ſhall not be permitted to be packed up in order to be exported, not having the ſtamps by this act directed, and alſo the frame marks plain at both ends of every piece, where a ſingle ſheet; and the officer who ſhall attend to ſee ſuch paper packed up, ſhall meaſure the ſame, and ſee that the ſaid ſtamps and frame marks are cut off from both ends of every piece or ſingle ſheet. 26 *G.* 3. *c.* 78. *ſ.* 19. Exportation.

All penalties, fines and forfeitures, ſhall be ſued for, recovered, levied, and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*, half to the king, and half to him who ſhall inform or ſue. 26 *G.* 3. *c.* 78. *ſ.* 20. 34 *G.* 3. *c.* 20. *ſ.* 52. Penalties how to be recovered.

And all paper, materials, and utenſils, in cuſtody of the maker, or of any to his uſe, or in truſt for him, ſhall be liable to all duties in arrear, and to all forfeitures relating to the ſaid duties, in the ſame manner as if the offender or debtor were the lawful owner. 10 *An.* *c.* 19. *ſ.* 55. 28 *G.* 3. *c.* 37. *ſ.* 21. Utenſils liable.

For the ſtamp duties on paper, ſee title Stamps.

Diſputes between paper-makers and their workmen, ſee that head, title Servants.

XIII. Plate.

True making of plate.

To prevent frauds in the true making of plate it is enacted by the 12 & 13 *W.* *c.* 4. the 1 *An.* *ſt.* 1. *c.* 9. and 13 *G.* 3. *c.* 52. that (beſides the city of *London*) *York*, *Exeter*, *Briſtol*, *Cheſter*, *Norwich*, *Newcaſtle* upon *Tyne*, *Sheffield*, and *Birmingham*, ſhall be appointed for the aſſaying and marking of plate. Aſſayers.

And the Goldſmiths, ſilverſmiths, and plateworkers in the ſaid places, ſhall be incorporated into a company and chuſe wardens yearly.

And an aſſayer ſhall be elected by the company in each of the ſaid places, who ſhall take an oath of office.

And by the ſaid acts, every goldſmith, ſilverſmith, and plateworker, within the ſaid places, and elſewhere, ſhall before he takes upon him to exerciſe the ſaid trade, enter his name, and mark, and place of abode, with the wardens of the company where an aſſayer is; and if he ſhall not make ſuch entry, or ſhall ſtrike any other mark but what is ſo entered, he ſhall forfeit double value, half to the Maker to be entered with the wardens of the company.

the king, and half to him that ſhall ſue in any court of record in the county or place where the offence ſhall be committed.

Aſſaying. And every goldſmith, ſilverſmith, and plateworker, inhabiting where there is not an aſſayer, ſhall firſt fix his mark, and then ſend it to an aſſayer; and if it be found by the aſſayer to be of the fineneſs of the ſtandard, then he ſhall mark it: And if any ſuch perſon ſhall make any plate (leſs in fineneſs than the ſtandard) or put any to ſale (except what by reaſon of its ſmallneſs is not capable of the touch) before it ſhall be aſſayed and marked, he ſhall forfeit the ſame or the value thereof.

And by 24 *G.* 3. *c.* 53. every working gold or ſilverſmith ſhall ſend to the aſſay office, all plate made by him to be touched or aſſayed, and with every parcel ſhall ſend a written note, containing the day of the month, and year, the name of the maker, and place of his abode, and alſo the ſpecies in ſuch parcel, and number of each ſpecies, with the total weight of each parcel, and the duty payable for the ſame. *ſ.* 4.

Fineneſs by the ſtandard. And as to the fineneſs thereof by the ſtandard, it is enacted by the 6 *G. c.* 11. that plate may be made, either according to the old ſtandard (of 11 ounces and 2 penny weights fine ſilver in every pound troy); or according to the new ſtandard (of 11 ounces and 10 penny weights); but differently marked. *ſ.* 41.

Mark. That is to ſay, plate of 11 ounces and 2 penny weights, ſhall be marked with the maker's mark, *viz.* the firſt letters of his chriſtian and ſurname; the mark of the goldſmiths company in *London*, *viz.* the leopard's head, lion paſſant, and a diſtinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be uſed by the aſſayers at the ſeveral reſpective places:)

And plate of 11 ounces and 10 penny weights ſhall be marked with the maker's mark, *viz.* the firſt letters of his chriſtian and ſurname; and the mark of the ſaid company, *viz.* a lion's head eraſed, the figure of a woman called *Britannia*, and the ſaid mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the ſaid cities or towns reſpectively.) 12 *G.* 2. *c.* 26. *ſ.* 5.

Additional mark. And moreover, all plate ſhall be marked with a new mark of the *king's head* beſide the old marks, and the duties ſhall be paid previous to the marking thereof. 24 *G.* 3. *c.* 53. *ſ.* 1. 5.

For

	£.	s.	d.	Total. £.	s.	d.	Duty.
For every ounce of *gold* plate made in *Great Britain* shall be paid, by 24 G. 3. c. 53. f. 1.	0	8	0				
By 37 G. 3. c. 90. f. 16. more	0	8	0				
				0	16	0	
For every ounce of *silver* plate shall be paid, by 24 G. 3. c. 53. f. 1. - - -	0	0	6				
By 37 G. 3. c. 90. f. 16. more	0	0	6				
				0	1	0	

Which said duties shall be over and above all former duties. 24 G. 3. c. 53. f. 2. 37 G. 3. c. 90. f. 17.

The said duties on plate made in *Great Britain* to be under the management of the commissioners of stamps. 24 G. 3. c. 53. f. 2. 37 G. 3. c. 9. f. 17. To be under the commissioners of stamps.

And no gold or silver plate shall be sold or exchanged until marked as aforesaid, on pain of 50l. 24 G. 3. c. 53. f. 8.

But the duties shall be returned for all plate defaced for being coarser than the standard (if no fraud appear). And an allowance of one fifth part shall be made for goods sent to be assayed in a rough state. f. 7. 10. Allowance to be made.

And the said duties shall not extend to any jeweller's work other than mourning rings, nor to any jointed night ear-rings of gold, or gold springs of lockets, or to goods excepted by 12 G. 2. c. 26. *Id.* f. 9. Goods excepted.

But by 30 G. 3. c. 31. the exceptions in 12 G. 2. c. 26. are repealed; and it is enacted, that nothing in the said acts of 12 G. 2. c. 26. or 24 G. 3. c. 53. shall extend to oblige any of the following wares of silver to be stamped or marked, *viz.* chains, necklace, beads, lockets, any philigree work, shirt buckles, or broaches, stamped medals, or spouts to china, stone, or earthen-ware teapots, or any of them, of any weight whatsoever. For any tippings, swages, or mounts, or any of them, not weighing 10 penny weights of silver each, except only necks and collars for castors, cruets, or glasses, appertaining to any sort of stands or frames. f. 3, 4.

And nothing in either of the said acts shall extend to oblige any wares of silver whatsoever, not weighing 5 penny weights of silver each, to be stamped or marked as aforesaid, except necks, collars, and tops for castors, cruets, or glasses appertaining to any sort of stands or frames, buttons to be affixed to or set on any wearing apparel, solid sleeve buttons, and solid studs, not having a bissilled edge soldered on; wrought seals, blank seals, bottle tickets,

tickets, ſhoe claſps, patch boxes, ſalt ſpoons, ſalt ſhovels, ſalt ladles, tea ſpoons, tea ſtrainers, caddy ladles, buckles (ſhirt buckles or broaches before mentioned excepted), and pieces to garniſh cabinets, or knife caſes, or tea cheſts, or bridles, or ſtands, or frames. *ſ.* 5.

And by 38 *G.* 3. *c.* 24. after 25th *March* 1798, the ſaid duties ſo far as they relate to gold or ſilver plate uſed for watch caſes, is repealed. *ſ.* 1.

Licence of dealers in plate.

Licence.

No perſon who ſhall trade in, vend, or ſell any gold or ſilver plate, or any goods or wares in which any gold or ſilver ſhall be manufactured, ſhall by himſelf, or by any other employed by or for him, either publickly or privately, trade in, vend, or ſell any piece of plate or goods, or any ware in which the quantity of gold ſhall be of the weight of two ounces or upwards, or in which the quantity of ſilver ſhall be of the weight of 30 ounces or upwards; unleſs he ſhall have firſt paid a duty of 5l. for a licence, to be granted by the officers of exciſe. And the ſame ſhall be renewed annually ten days before the end of the year; on pain of forfeiting 20l. 31 *G.* 2. *c.* 32. *ſ.* 3, 4. 32 *G.* 2. *c.* 24. *ſ.* 3.

And by 19 *G.* 3. *c.* 25. 21 *G.* 3. *c.* 17. and 22 *G.* 3. *c.* 66. a further duty of 3 five *per cents.* are impoſed.

Perſons in partnerſhip.

But perſons in partnerſhip, carrying on their trade in one houſe or ſhop only, ſhall not be obliged to take out more than one licence for one year. 31 *G.* 2. *c.* 32. *ſ.* 7.

Not to extend to ſmall quantities.

Provided that no perſon ſhall be liable to take out any licence for trading in, vending, or ſelling any quantity of gold not exceeding two penny weights, or of ſilver not exceeding five penny weights, in any one ſeparate and diſtinct ware or piece of goods. 32 *G.* 2. *c.* 24. *ſ.* 1.

Auctioneer and others ſelling plate to be deemed traders.

All perſons uſing the trade of ſelling gold or ſilver plate, or any goods or wares compoſed of gold or ſilver, or in which any gold or ſilver ſhall be manufactured; and alſo all perſons employed to ſell any gold or ſilver plate, or any ſuch goods or wares aforeſaid, at any auction or public ſale; ſhall reſpectively be deemed traders in, ſellers, or venders of gold or ſilver plate, and ſhall take out a licence for the ſame. 31 *G.* 2. *c.* 32. *ſ.* 6.

Pawnbrokers and refiners.

No pawnbroker ſhall by himſelf, or by any other for his benefit, (either publicly or privately,) trade in or ſell any gold or ſilver plate, or any goods or wares in which any gold

gold or silver shall be manufactured; and no person by himself, or by any other for his benefit, shall use the trade of a refiner of gold or silver, without taking out and renewing yearly such licence as aforesaid. 32 G. 2. c. 24. s. 4.

And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate. *Id.*

And if any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid; he shall forfeit 20l. *Id.*

Unto what places the licence shall extend.

No licence shall authorise any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets. 31 G. 2. c. 32. s. 7.

Prosecution for offences.

Prosecutions for offences may be in the courts at *Westminster*; or otherwise, if within the limits of the chief office of excise in *London*, the same may be before three commissioners of excise, and in case of appeal before the commissioners of appeal; and elsewhere, before two justices residing near to the place where the offence was committed. s. 11.

And the said commissioners of excise, and commissioners for appeals (in case of appeal), and justices respectively, shall upon complaint or information on oath summon the party accused; and upon his appearance or contempt shall proceed to the examination of the fact; and on due proof made thereof by confession, or oath of one witness, shall give judgment; and issue warrants under their hands for levying the penalties by distress (if not redeemed in 14 days); and for want of sufficient distress, shall imprison the offender till satisfaction be made. *Id.*

Mitigation.

And they may mitigate the said penalties of 20l. as by the laws of excise. 32 G. 2. c. 24. s. 8.

Appeal.

Persons aggrieved may appeal to the next sessions. 31 G. 2. c. 32. s. 11.

Disposal of the forfeitures.

All forfeitures (the necessary charges for the recovery thereof being first deducted) shall be distributed, half to king, and half to him who shall inform or sue. s. 12.

Importation. By the 27 *G.* 3. *c.* 13. certain duties are impoſed on plate imported, as particularly ſet forth in a table annexed to the act. And by 37 *G.* 3. *c.* 90. further duties are impoſed on plate imported; to be under the management of the officers of cuſtoms.

Exportation. So much wrought plate ſhall be exported yearly as ſhall be allowed by the commiſſioners of the cuſtoms or three of them. 9 & 10 *W.* *c.* 28. *ſ.* 1.

But no drawback ſhall be allowed on the exportation of ſilver plate. 31 *G.* 2. *c.* 32. *ſ.* 9.

[For other regulations concerning plate, not relating to any of theſe duties, the reader may conſult the ſtatutes at large mentioned under this head: And eſpecially the 12 *G.* 2. *c.* 26.]

XIV. Salt.

Former duties repealed. By 38 *G.* 3. *c.* 89. the management of the ſalt duties is transferred to the commiſſioners of exciſe; and all duties, drawbacks, diſcounts, allowances, and bounties payable on ſalt, are repealed; and after 10th *October* 1798, the following duties are impoſed in lieu thereof:

New duties.

	£.	s.	d.
For every buſhel of ſalt, not being the product or manufacture of *Great Britain* imported - - -	0	13	4
For every buſhel of ſalt, or rock ſalt, made at any ſalt work, or taken out of any ſalt mine or pit in *England* or *Wales* -	0	10	0
If made in *Scotland* (39 *G.* 3. *c.* 77. *ſ.* 2.) - - -	0	4	0
For every buſhel of *Glauber* or *Epſom* ſalt made in *Great Britain* (38 *G.* 3. *c.* 89.)	0	10	0
For every ton of *mineral alkali* or *flux* for glaſs made of rock ſalt, or from brine or ſea water - - -	1	0	0
For every buſhel of rock ſalt which ſhall be exported - - -	0	0	1
For every buſhel of ſalt, or rock ſalt imported from *Scotland*, accompanied with a permit that it hath paid the duty of 4 s. (39 *G.* 3. *c.* 77. *ſ.* 2. 2 s.) -	0	6	0

And ſo in proportion for any greater or leſs quantity. 38 *G.* 3. *c.* 89. *ſ.* 1, 2.

Drawbacks allowed. And certain drawbacks are allowed on the exportation thereof. *ſ.* 3, 78, 79, 80.

And

And 65 pound weight avoirdupois of rock salt shall be deemed a bushel, and 56 pound of every other kind of salt. *s.* 4. What shall be deemed a bushel.

Which said duties shall be under the management of the commissioners of excise. *s.* 6. To be under the commissioners of excise.

And such commissioners may compound for the duty with the refiners of rock salt, and also for the duty on mineral alkali or flux for glass. *s.* 7. Commissioners may compound with refiners.

The duty for foreign salt imported shall be paid by the importer upon entry, and before landing, and if unshipped or landed, or put on shore, or into any vessel in *Great Britain* before duly entered, and the duty paid; or without a warrant for the landing or delivery thereof from the collector, such salt shall be forfeited, together with the packages, vessels, horses, cattle and carriages made use of in removing, landing, carrying, or conveying the same, which may be seized by any officer of excise or customs; and every person employed therein, or to whose hands the same shall come after having been so unshipped as aforesaid, knowing the same, shall forfeit treble the value thereof. *s.* 8. Salt imported.

And if any salt imported, shall not be entered and landed and the duty paid within 20 days after the master or person having the charge of such vessel, shall, or ought to have made his report of the burthen thereof as directed by 13 & 14 *G.* 2. *for preventing frauds in the customs*, such salt shall be forfeited, and may be seized by any such officer. *s.* 9. Salt imported and not entered, forfeited.

Provided nevertheless, that such foreign salt, not less than 50 bushels, upon entry, and before payment of the duty, may be landed in the presence of an officer, and shall be weighed and warehoused upon bond being given in double the amount of the duty, to pay and clear off such duty when sold, if within twelve months, and if not sold within that time, then at the end of such twelve months. *s.* 10. Foreign salt may be warehoused, on bond for payment of the duty.

And every such warehouse shall be secured under joint locks of such officer and proprietor, and no salt shall be put into, or be delivered out of such warehouse in less quantity than 50 bushels at one time, and when any such proprietor shall be desirous to lodge or take out salt, he shall give twelve hours previous notice in writing to such officer, specifying therein the day and hour, and also the quantity of salt intended to be put in or taken out, and such officer shall attend accordingly. *s.* 11. Warehouses to be secured under the joint lock of the officer and proprietor.

In what veſſels to be imported.

And no foreign ſalt ſhall be imported, in any veſſel of leſs burthen than 40 tons (except for the uſe of the ſeamen, not exceeding 5 pounds for each man) upon pain of forfeiting ſuch ſalt, together with the packages, and alſo ſuch veſſel with her guns and furniture, which may be ſeized by any ſuch officer. *ſ.* 13.

Salt not to be imported from Ireland, Guernſey, Jerſey, Sark, Alderney, or Man.

Provided, that no ſalt, or rock ſalt, whether the produce of *Great Britain* or any other country, ſhall be imported from *Ireland*, *Guernſey*, *Jerſey*, *Sark*, *Alderney*, or *Man*, except for the uſe of the ſeamen, not exceeding 2 pounds for each man: or if any veſſel ſhall be found at anchor, or hovering within the limits of any port, or within four leagues of the coaſt, or to have been within ſuch limits, and not proceeding on her voyage wind and weather permitting, unleſs in caſe of unavoidable neceſſity, of which the maſter ſhall give notice to the collector, or chief officer of the place; then, and in every ſuch caſe, not only ſuch ſalt and packages containing the ſame, but alſo ſuch veſſel with her guns and furniture, ſhall be forfeited, and may be ſeized by any ſuch officer. Provided, that the ſame ſhall not extend to fiſhing veſſels having on board no more than a neceſſary quantity of ſalt duly received from entered warehouſes, or from other veſſels employed in fiſhing, not exceeding the quantity neceſſary for preſerving ſuch quantity of fiſh as may be reaſonably expected to be taken by the crew during that trip or voyage. *ſ.* 14.

Fiſhing veſſels having ſalt on board.

Places for making ſalt in England to be entered.

And every perſon being a maker of ſalt, or a refiner of rock ſalt, or a proprietor of any ſalt mine, ſalt pit, ſalt refinery, or ſalt work, ſhall, on or before 10th *October* 1798, or before he ſhall begin, make entry in writing at the office of exciſe within the limit, of every ſuch ſalt mine, ſalt pit, ſalt refinery, and ſalt work whatſoever belonging to him, ſpecifying the pariſh and place where ſituate, and alſo the number and ſituation of all workhouſes, ſheds, ciſterns, receivers, reſervoirs, pans, ſtoves, rooms, lofts, warehouſes, ſtorehouſes and other places, uſed for the making, refining, or keeping of ſalt, on pain of forfeiting 100l. together with ſuch ſalt, and the packages containing the ſame, and other articles aforeſaid uſed in the making of ſalt, or which ſhall be found in any private or unentered place, which may be ſeized by any ſuch officer. *ſ.* 17.

Officer may enter and take an account.

And any officer of exciſe, may at any time by day or night upon requeſt, enter into every ſalt mine, ſalt pit, ſalt

ſalt refinery, or ſalt work; and alſo into every ſuch work-houſe, and places aforeſaid entered, or made uſe of by any ſuch maker or refiner, and by weighing, gauging, tale, or otherwiſe as to him ſhall ſeem meet, take an account of the quantity and kinds of ſalt there found. *ſ.* 18.

Proprietors to provide warehouſes, and ſtow their rock ſalt therein.

And every proprietor of any ſalt mine or pit, ſhall provide a proper warehouſe with ſufficient faſtenings thereto, and adjoining to the entrance or ſhaft of every ſalt mine or pit, into which all rock ſalt ſhall be put at his expence; and ſuch warehouſe ſhall not have more than three doors into the ſame, and ſhall be locked up and ſecured by the proper officer, except at ſuch times as the ſame ſhall be opened by ſuch officer for depoſiting rock ſalt therein, or when taking an account of, or weighing, or delivering the ſame out of ſuch warehouſe; and if any ſuch proprietor ſhall make default in providing or ſupporting ſuch warehouſe, or ſhall not cauſe ſuch rock ſalt to be removed to, and ſtowed in, the ſame as aforeſaid, he ſhall forfeit 100 l. *ſ.* 19.

Proprietors to give notice of their intention to take ſalt out of the mine.

And every ſuch proprietor ſhall, before he begin to raiſe or take away any ſalt from any mine or pit, give twelve hours notice in writing to the officer, of the day and hour when he intends to begin, and if he ſhall not begin within one hour after the time mentioned in ſuch notice, the ſame ſhall be void, and he ſhall be obliged to give a freſh notice; and in default thereof, ſhall for every ſuch offence forfeit 20 l. *ſ.* 20.

Rock ſalt not to be taken from warehouſes but in the preſence of an officer.

And no rock ſalt ſhall be taken out of any ſuch warehouſe except in the preſence of the proper officer, nor in leſs quantity than four buſhels at one time, and between the hours of five in the morning and ſeven in the evening from 24th *March* to 29th *September*, and between ſeven in the morning and five in the evening from 28th *Sept.* to 28th *March* in each year. And all rock ſalt delivered or removed contrary to this act, together with the package containing the ſame, and the veſſels, waggons, carts, carriages, horſes and cattle employed therein, ſhall be forfeited, and may be ſeized by any ſuch officer; and ſuch proprietor ſhall forfeit alſo 40 s. for every buſhel of ſuch ſalt, or 50 l. at the election of the attorney general, or perſon who ſhall ſue. *ſ.* 21.

Makers and refiners of ſalt to provide warehouſes, &c.

And every maker or refiner of ſalt, and proprietor of any ſalt work, ſhall provide and ſupport proper warehouſes, with ſufficient faſtenings thereto, into which all their ſalt (rock ſalt excepted) ſhall be put, and no ſuch

warehouſe ſhall have more than two doors for delivering ſalt out thereof, or more than four doors immediately into or communicating with any pan or boiling houſe; nor ſhall there be any other door or communication whatſoever between any ſuch warehouſe and any other place, except the doors aforeſaid; and every ſuch warehouſe ſhall be locked up by the proper officer except at ſuch times only as ſuch officer ſhall be attending for the purpoſe of depoſiting ſalt therein, or for weighing, or taking account of, or delivering ſalt out of the ſame; and if any ſuch perſon ſhall neglect or refuſe to provide ſuch warehouſes as aforeſaid, he ſhall forfeit 50l. *ſ.* 22.

To give previous notice of charging their pans.

And every ſuch maker, refiner, and proprietor ſhall, before he begin to charge any pan or boiler with brine, or other preparation for making or refining ſalt, give to the officer ſix hours notice in writing, ſpecifying therein the particular time and hour when he intends to begin, and alſo whether he intends to make large grained, commonly called *fiſhery ſalt*, or fine grained ſalt; and if he ſhall not begin within one hour after the time mentioned in ſuch notice, the ſame ſhall be void, and he ſhall be obliged to give a freſh notice, and in default thereof ſhall forfeit 20l. for every ſuch offence. *ſ.* 23.

And to proceed without delay.

And every ſuch perſon who in purſuance of ſuch notice as aforeſaid, ſhall begin to charge his pan or boiler, ſhall proceed without delay, and with all due diſpatch to charge the ſame with brine or other preparation for making ſalt, or refining rock ſalt, and ſhall charge ſuch pan or boiler with the whole quantity intended to be worked off at ſuch operation, on pain of forfeiting 20l. Provided, that if any ſuch perſon ſhall have occaſion to increaſe the brine in any pan or boiler after having been charged, and before any ſalt hath been taken therefrom, he ſhall be allowed once but not oftener to increaſe the quantity of brine in any ſuch pan or boiler, upon giving to ſuch officer a notice in writing of ſuch his intention two hours before he ſhall add ſuch increaſe. *ſ.* 24.

Brine may be added once but not more.

The whole operation to be finiſhed before freſh brine is put in.

And if any ſuch maker, refiner, or proprietor, ſhall put any brine into any pan or boiler after he hath begun to take any ſalt out of the ſame, and before the whole operation of ſuch particular charge ſhall be finiſhed and all the ſalt taken out; or ſhall put any brine into any pan or boiler after the ſame hath been fully charged, (except as aforeſaid,) he ſhall forfeit 50l. *ſ.* 25.

Salt taken from each pan to be kept ſeparate.

And all the ſalt taken out of each pan or boiler at each operation, ſhall be kept in the boiling place ſeparate from

all

all other ſalt whatever, and within ten hours after ſo taken out, and before any ſalt of any ſubſequent boiling ſhall be taken from out of the ſame pan or boiler; ſuch maker ſhall deliver to the proper officer a declaration in writing, ſpecifying the number of baſkets, barrows, or troughs of ſalt made at ſuch boiling, and thereupon ſuch officer ſhall take an account of the number thereof: And as ſoon as he ſhall have taken ſuch account, ſuch maker ſhall, with a ſufficient number of his workmen, remove all ſuch ſalt into his entered warehouſe; and upon neglect or refuſal, ſhall forfeit 20 l. *ſ.* 26, 27.

Maker to provide workmen and aſſiſt.

And in caſe any ſuch maker, refiner, or proprietor, inſtead of keeping the ſalt of each boiling in the pan or boiling houſe until the whole of each boiling is finiſhed, ſhall be deſirous to put any ſalt of any particular boiling into his warehouſe, before ſuch boiling is finiſhed, he may put one half (but neither more nor leſs) of the whole number of baſkets, barrows, or troughs made at each ſuch boiling into ſuch warehouſe upon the following terms, *viz.* that in the notice required to be given for charging his pan or boiler, he ſpecify the number of baſkets, barrows, or troughs of which ſuch half ſhall conſiſt, and the day and hour when ſuch half ſhall be removed into ſuch warehouſe; and alſo, that all the ſalt which, according to the ſpecification in ſuch notice, ſhall be intended to be removed into ſuch warehouſe at each ſuch removal, ſhall be actually ſo put immediately after ſuch officer ſhall have taken an account thereof, and before any more or other ſalt ſhall be taken out of the pan or boiler of that or any ſubſequent boiling. *ſ.* 28.

Half the ſalt of one boiling may be warehouſed before the whole is finiſhed.

And if any ſuch maker or other perſon ſhall remove any ſalt of which an account has not been taken (rock ſalt excepted) into any ſuch entered warehouſe, or ſhall convey out of any ſuch boiling houſe to any place, any ſalt, before the boiling of which ſuch ſalt is a part, ſhall be worked off, or the declaration herein required ſhall have been delivered to ſuch officer; or before he hath taken an account of and aſcertained the number of buſhels, barrows, or troughs of ſalt of ſuch boiling, or before the ſame ſhall have been removed into ſuch entered warehouſe, then all the ſalt ſo removed, contrary to the true intent and meaning of this act, ſhall be forfeited, together with the packages, which may be ſeized by any ſuch officer; and the perſon ſo offending ſhall forfeit 20 s. for every pound thereof, or 100 l. at the option of the attorney general, or perſon who ſhall ſue. *ſ.* 30.

Salt not to be warehouſed until an account be taken.

Salt may be removed to export warehouſes.

And every ſuch maker or refiner may deliver ſalt duty free (rock ſalt excepted) from ſuch warehouſe or other place, to be forthwith conveyed to, and depoſited in any export warehouſe at *Liverpool* or *Briſtol* for the purpoſe of being exported therefrom beyond ſea. *ſ.* 33.

Bond to be given.

And before ſuch ſalt ſhall be removed to ſuch export warehouſe, the maker, refiner, or proprietor, ſhall give bond in double the amount of the duty, that the ſame ſhall be delivered at ſuch export warehouſe (danger of enemies excepted) and ſhall not be delivered for home conſumption, or otherwiſe fraudulently diſpoſed of in *Great Britain*. *ſ.* 70.

How ſuch bond may be diſcharged.

And every ſuch bond ſhall be diſcharged, upon leaving with the proper officer within three months, a certificate that ſuch ſalt was duly delivered at, and ſecured in ſuch warehouſe to which conſigned. *ſ.* 71.

Salt removed to export warehouſes may be immediately ſhipped.

Provided, that if on the arrival at *Liverpool* or *Briſtol* of any ſalt ſo delivered upon bond, to be delivered at any ſuch export warehouſe, the proprietor ſhall be deſirous of immediately exporting the ſame, inſtead of firſt putting it into ſuch export warehouſe, he may, upon conforming to the rules herein preſcribed immediately ſhip the ſame, and the officer being ſatisfied, ſhall give a certificate teſtifying the quantity ſo ſhipped; which being left with the proper officer where ſuch bond was given, and if the ſame agree with the quantity firſt delivered out, ſuch bond ſhall be diſcharged. *ſ.* 72.

Salt not to be removed but at certain times.

And if any ſalt or rock ſalt ſhall be taken out of any ſuch warehouſe except in the preſence of an officer, and according to the directions of this act, between ſeven in the evening and five in the morning from 24th *March* to 29th *Sept.*, or between five in the evening and ſeven in the morning from 28th *Sept.* to 25th *March*, ſuch ſalt and rock ſalt, together with the package containing the ſame, and alſo the waggons, carts, or carriages, horſes and cattle employed in removing thereof, ſhall be forfeited, and may be ſeized by any ſuch officer; and every perſon concerned therein, or in whoſe poſſeſſion ſuch ſalt ſhall be found, ſhall forfeit 100*l.* for every ſuch offence. *ſ.* 34.

Nor without a permit.

And if any ſalt or rock ſalt ſhall be found removed or removing from any ſalt work without a permit accompanying the ſame; or if conſigned to *London*, *Liverpool*, *Worceſter*, *Glouceſter*, or *Briſtol*, ſhall be found removed or removing to any of the ſaid places, or coaſtwiſe, without a permit accompanying the ſame, or under a falſe deſcription,

deſcription, ſuch ſalt ſhall be forfeited, together with the package containing the ſame, and alſo the veſſels, waggons, carts, and carriages, horſes and cattle uſed in removing thereof, which may be ſeized by any ſuch officer, and the perſon in whoſe cuſtody the ſame ſhall be found, or who ſhall be concerned therein, ſhall forfeit 40s. for every pound weight thereof; or 100l. at the option of the attorney general, or perſon who ſhall ſue. *ſ.* 35.

Perſons removing ſalt without a permit, may be carried before a juſtice and fined or impriſoned.

And if any ſuch officer ſhall diſcover any perſon in the act of carrying or removing ſalt or ſalt rock from any mine, pit, or ſalt work, without being accompanied by a legal permit, ſuch officer may apprehend ſuch perſon and take him before a juſtice, who on confeſſion, or proof on oath of one witneſs, may convict ſuch perſon in the penalty of 50l. which if not immediately paid into the hands of ſuch officer, or ſuch ſum to which ſuch penalty may have been mitigated by ſuch juſtice, ſuch offender may be committed to the houſe of correction to hard labour for not exceeding twelve months, to be reckoned from the day of ſuch conviction, and he ſhall not be diſcharged until he ſhall have paid the ſaid penalty, or until ſuch term of commitment is expired. *ſ.* 36.

Warehouſes to be approved by the officer, and repaired and altered as he ſhall direct.

And no ſuch warehouſe ſhall be deemed ſufficient until approved on by the officer of the diſtrict. And every ſuch maker, refiner, proprietor, or dealer ſhall, at his own expence, when required by ſuch officer, ſet about altering, repairing, or amending ſuch warehouſe, which he ſhall do to the ſatisfaction of ſuch officer. Or if any perſon ſhall by any means whatſoever open or enter any ſuch warehouſe, except in the preſence of the proper officer whoſe buſineſs it ſhall be to attend to unlock the ſame; he ſhall, for every ſuch offence, forfeit 20l. *ſ.* 37, 38.

Locks and faſtenings to be provided by the officer at the expence of the proprietor,

And the officer of the diſtrict ſhall provide and affix proper locks and faſtenings of the beſt ſort, at the expence of the proprietor upon every warehouſe, and if he ſhall refuſe or neglect to pay for the ſame, or if any perſon ſhall wilfully deſtroy, damage or injure the ſame, or ſhall by any device, open, take off, or remove any ſuch lock or faſtening, or ſhall open, break, or remove any door, ſhutter, partition, floor, or roof, or any part thereof belonging to any ſuch warehouſe or place aforeſaid, he ſhall, for every ſuch offence, forfeit 100l. *ſ.* 39.

and to be repaired by the proprietor.

And every ſuch maker, refiner, proprietor, or dealer, to whom ſuch locks, keys, and faſtenings ſhall belong, ſhall, when required by ſuch officer, alter, repair, and amend

amend the ſame within a reaſonable time, on pain of forfeiting 20 l. *ſ.* 40.

Notice to be given when ſalt is intended to be taken out of warehouſes.

And when any ſuch maker, refiner, or proprietor ſhall have occaſion to deliver ſalt out of any ſuch entered warehouſe, he ſhall give two hours notice to the proper officer, ſpecifying therein whether the ſalt to be delivered be rock or other ſalt, and whether for home trade or exportation, or for removal to any and what particular export warehouſe, or for the uſe of the fiſheries, or rock ſalt to be uſed at any and what refinery of rock ſalt, or for making of mineral alkali or flux for glaſs; and thereupon ſuch officer on being ordered by the ſupervifor, and not having other neceſſary employment at the time, ſhall attend and open ſuch warehouſe or place, and weigh and take an account of all the ſalt ſo delivered out, and ſhall make a juſt report and return thereof to the commiſſioners or who they appoint to receive the ſame, which return ſhall be a charge upon ſuch maker, refiner, or proprietor: Provided nevertheleſs, that ſuch proprietor ſhall be diſcharged from payment of the duty, for ſo much of the rock ſalt ſo returned and charged as aforeſaid, as ſhall be carried to ſuch refinery of rock ſalt for the purpoſe of being refined, or for making mineral alkali or flux for glaſs; and ſhall alſo be relieved from payment of the duty for ſo much ſalt returned and charged as aforeſaid (rock ſalt excepted) as ſhall be delivered for immediate *exportation*, or for removal to any ſuch export warehouſe, or for *curing fiſh*, and that ſuch ſalt be removed and delivered according to the directions of this act: Provided alſo, that ſuch rock ſalt ſo delivered for exportation unrefined, ſhall pay no higher duty than 1 *d.* for every buſhel. *ſ.* 41

Officer to attend and take an account.

Rock ſalt taken out for refining.

Salt taken out for exportation or curing fiſh.

Rock ſalt may be made into white ſalt.

And whereas it is expedient that rock ſalt ſhould be refined and made into white ſalt, it is enacted, that after 10th *Oct.* 1798, rock ſalt may be refined and made into white ſalt at any ſuch ſalt work (and no other) as ſhall be erected and duly entered for refining rock ſalt at any place within ten miles of the mine or pit from which the ſame ſhall have been taken, or which ſhall have been entered and uſed for refining rock ſalt previous to the paſſing of this act. And if any perſon ſhall refine any rock ſalt, or make the ſame into white ſalt except at ſuch places as aforeſaid, or licenſed under the proviſions of this act, he ſhall forfeit 200 l. *ſ.* 15, 16.

Permits to be granted.

And when any maker, refiner, or proprietor ſhall have occaſion to remove or ſend away any ſalt, the officer of

the diviſion ſhall, without fee, upon a requeſt note being delivered to him, grant a permit under his hand, which ſhall expreſs the quantity or weight of ſuch ſalt, diſtinguiſhing whether rock ſalt, or other ſalt, and the names of the reſpective perſons from whom, and to whom the ſame is intended to be removed, and whether by land or water, and by what mode of conveyance, and if rock ſalt, whether for the purpoſe of being refined in *England* or for making mineral alkali, or for exportation in its native ſtate; and if not rock ſalt, whether for home conſumption or immediate exportation, or to any and what particular export warehouſe, or to be uſed in curing fiſh, and ſuch officer ſhall ſpecify therein the time for which the ſame ſhall be in force. *ſ.* 42.

Requeſt note to be firſt delivered.

And no ſuch permit ſhall be granted, or be valid, unleſs ſuch maker, refiner, or proprietor, ſhall deliver to ſuch officer a requeſt note in writing ſpecifying his name, and alſo the name of the perſon to whom, and the place to which ſuch ſalt is intended to be removed, and the weight or quantity thereof, and whether to be removed in bulk, or in baſkets, bags, or other packages, and the number, kind, and ſort thereof, and whether to be removed by land or water, and by what mode of conveyance, and if rock ſalt, whether for the purpoſe of being refined by the perſon to whom ſent, or for making mineral alkali, or for exportation in its unrefined ſtate; or if other ſalt, whether for home conſumption or exportation, or to be uſed in curing fiſh. *ſ.* 43.

Permit after expiration to be returned.

And every perſon by whom any ſuch permit ſhall have been received, and in whoſe poſſeſſion the ſame ſhall be, ſhall upon demand by any ſuch officer, after the time limited in ſuch permit for the removal of any ſalt ſpecified therein ſhall be expired, deliver the ſame to ſuch officer on demand; on pain of forfeiting 50l. for every ſuch offence. *ſ.* 104.

Giving falſe permits.

And if any perſon ſhall knowingly and willingly give any falſe permit, or receive any ſuch falſe permit with any ſalt removed as aforeſaid; or ſhall fraudulently alter or eraſe any ſuch permit, or publiſh or make uſe of the ſame, he ſhall forfeit 500l. for every ſuch offence. *ſ.* 132.

A daily account to be kept of ſalt ſold and delivered and for what purpoſe.

And every ſuch maker, refiner, or proprietor, ſhall daily enter in a book or paper an account of every parcel and quantity of ſalt ſold, delivered, or ſent out by him, diſtinguiſhing the ſpecies of ſalt, and whether intended for home trade or conſumption, or for immediate exportation,

ation, or for removal to ſome export warehouſe, ſpecifying the ſame, and the owner thereof, or for curing fiſh, or rock ſalt for refining, or making mineral alkali; which book or paper ſhall be returned to the next exciſe office every ſix weeks, and the truth thereof verified upon the oath of ſuch maker, refiner, or proprietor, or his chief workman or agent, before the collector or ſupervisor; on pain of forfeiting 100 l. ſ. 44.

Duties to be cleared off, or bond given.

And every ſuch maker, refiner, and proprietor ſhall, within one week after ſuch entry upon oath hath, or ought to have been made, pay and clear off all the duties due in the then current week, unleſs he give bond in double the value of the duties likely to ariſe or become due within any ſix weeks, for the due payment thereof at the end of every ſix weeks; and if any ſuch maker, refiner, or proprietor who ſhall not have given ſuch bond ſhall neglect or refuſe to clear off the duty at the end of every week, ſhall, for every ſuch offence forfeit double the amount of ſuch duty. ſ. 45, 46.

Materials anſwerable for the duty.

And all ſalt, and materials, preparations, machines, utenſils, and veſſels in the cuſtody of any ſuch maker, refiner, or proprietor, or perſon for his uſe, ſhall be liable to all duties in arrear, and ſhall alſo be ſubject to all fines, penalties, and forfeitures for any offence againſt this act; and it ſhall be lawful in all ſuch caſes to levy the ſame and to uſe ſuch proceedings as may be done in relation to ſuch ſalt, materials, and other articles, as if the debtor or offender was the lawful owner. ſ. 47.

Removing rock ſalt without a permit.

And if any rock ſalt ſhall be found removing to, or delivered at any ſalt refinery or ſalt work whatſoever without a legal permit according to the directions of this act, the ſame ſhall be forfeited, together with the package, veſſels, waggons, carts, and carriages, horſes and cattle uſed in moving thereof, which may be ſeized by any ſuch officer, and every perſon concerned in removing, or knowingly receiving the ſame without ſuch permit as aforeſaid, ſhall forfeit 100 l. ſ. 48.

Or in its native ſtate.

And if any refiner ſhall remove or diſpoſe of any rock ſalt in its unrefined ſtate, except for melting at and for the uſe of his own works, or knowingly ſuffer any rock ſalt to be removed or diſpoſed of contrary to the true intent and meaning of this act, he ſhall forfeit the ſame, together with the packages, which may be ſeized by any ſuch officer; and ſhall alſo forfeit 40 s. for every pound weight thereof, or 100 l. at the option of the attorney general, or perſon who ſhall ſue. ſ. 49.

And

And every ſuch maker, refiner, and proprietor, ſhall provide and keep ſufficient ſcales and weights at every ſalt mine, pit, refinery, work, and export warehouſe, and ſhall permit the officer to uſe the ſame, and in default thereof, or if he ſhall in weighing make uſe of any falſe or inſufficient ſcales or weights, or ſhall practiſe any device by which ſuch officer may be prevented from taking a juſt weight, and in aſcertaining the true quantity of ſuch ſalt, he ſhall forfeit 100 l. together with ſuch falſe ſcales and weights, which may be ſeized by any ſuch officer. *ſ.* 50.

Scales and weights to be provided.

And every ſuch perſon ſhall when required by the officer, aſſiſt with a ſufficient number of his ſervants to the utmoſt of his power in weighing ſuch ſalt, on pain of forfeiting 100 l. *ſ.* 51.

Makers, &c. to aſſiſt with their ſervants.

And if any perſon ſhall remove or carry away, hide, or conceal any ſalt with intent to evade the duty, he ſhall forfeit 50 l. together with ſuch ſalt and packages, which may be ſeized by any ſuch officer. *ſ.* 52.

Concealing ſalt to evade the duty.

And where ſuch officer is required to aſcertain the quantity of ſalt by weight, no leſs than two buſhels ſhall be weighed at one draught, except where the whole quantity to be delivered at one time ſhall be leſs than two buſhels, and in weighing, the turn of the ſcale ſhall be in favour of the crown, and in lieu thereof, an allowance ſhall be made after the rate of half a pound in every two buſhels. *ſ.* 53.

Not leſs than two buſhels to be weighed at one draught.

And any officer of exciſe or cuſtoms, may ſeize any quantity of ſalt, together with the package, that ſhall be found in any veſſel, waggon, cart, or carriage, or loaded on any horſe, or which ſhall be lodged or concealed in any houſe, outhouſe, or other place, and alſo ſuch veſſel, carriage, horſe, or cattle made uſe of in drawing ſuch carriage; or in carrying ſuch ſalt, when ſuch officer ſhall have good reaſon to ſuſpect that ſuch ſalt hath been privately and clandeſtinely procured or made in ſome private ſalt work, or other private place, or clandeſtinely imported without payment of duty, or hath been fraudulently unſhipped or relanded after having been ſhipped for exportation, or for curing fiſh; or fraudulently or clandeſtinely taken out of ſome warehouſe, or other place where lodged under the direction of this act; and if the party in whoſe poſſeſſion ſuch ſalt ſhall be found, or who ſhall lay claim thereto, ſhall not, at the hearing for condemning the ſame, make it appear to the ſatisfaction of the court and jury that the duty hath been fairly paid,

Officers may ſeize ſalt found in veſſels and carriages, ſuſpected of being clandeſtinely removed.

or that the ſame was not landed, unſhipped, or re-landed, or taken out of any ſuch warehouſe or place as aforeſaid, with any fraudulent intent, then ſuch ſalt, together with the package, veſſels, waggons, carts, carriages, and horſes in and upon which the ſame ſhall be found, or which ſhall be uſed or employed in removing ſuch ſalt, ſhall be forfeited, and the perſon in whoſe cuſtody the ſame ſhall be found, or concerned therein, ſhall forfeit 40 s. for every pound weight thereof. *ſ.* 54.

Officers may ſearch for ſalt hid, by warrant from the commiſſioners or a juſtice.

And if any ſalt ſhall be fraudulently lodged, hid, or concealed in any place with intent to evade the duty, the ſame ſhall be forfeited, together with the package, which may be ſeized by any ſuch officer; and if he ſhall have cauſe to ſuſpect that any ſuch ſalt is depoſited, lodged, hid, or concealed in any place, within the limits of the chief office in *London*, upon oath made by ſuch officer before two commiſſioners of exciſe, elſewhere before one juſtice, where ſuch officer ſhall ſuſpect ſuch ſalt to be concealed, ſetting forth the grounds of ſuch ſuſpicion, ſhall by warrant empower ſuch officer by day or night, but if in the night in the preſence of a conſtable, to enter into every ſuch ſuſpected place, and to ſeize and carry away all ſalt there found, together with the packages; and the perſon in whoſe poſſeſſion ſuch ſalt ſhall be found, ſhall forfeit 40 s. for every pound weight thereof, or 100 l. at the election of the attorney general or perſon who ſhall ſue. *ſ.* 55.

Proof of payment of the duty to lie on the owner.

And if any ſalt ſhall be ſeized, and any diſpute ſhall ariſe whether the duties thereon have been paid, in every ſuch caſe the proof of the payment of the duties, or that the ſalt was fairly and lawfully removed from ſome entered ſalt work according to the directions of this act, ſhall lie on the owner or claimer of ſuch ſalt, and not on the officer who ſeized the ſame. *ſ.* 56.

Rock ſalt not to be delivered duty free except from the warehouſe where raiſed.

No rock ſalt ſhall be delivered duty free except ſuch only as ſhall be removed out of the warehouſe belonging and adjoining to the ſalt mine or pit from whence the ſame was taken, to be carried to ſome entered refinery of rock ſalt according to the regulations of this act, and ſhall be conveyed directly from ſuch warehouſe to ſuch refinery. *ſ.* 59.

Except for making mineral alkali, &c.

Provided nevertheleſs, that nothing herein ſhall extend to prevent any ſuch maker of mineral alkali or flux for glaſs from taking rock ſalt out of any ſuch warehouſe duty free for making thereof, on giving bond as hereinafter preſcribed. *ſ.* 60.

Provided

Provided alſo, that no rock ſalt ſhall be delivered duty free to be refined at any entered refinery, before the proprietor of ſuch ſalt mine or pit from whence taken, ſhall give bond in treble the value of the duty, that ſuch rock ſalt ſhall be duly delivered at ſuch refinery (danger of enemies excepted), and that no part thereof ſhall be ſold or delivered for any other purpoſe, or otherwiſe fraudulently diſpoſed of. *ſ.* 73. Bond to be given.

And ſuch bond ſhall be diſcharged upon ſuch proprietor leaving with the proper officer, a certificate under the hand of the officer where ſuch ſalt was delivered, teſtifying that the ſame was duly delivered. *ſ.* 74. How ſuch bonds ſhall be diſcharged.

And no rock ſalt which ſhall be delivered duty free to be conveyed to any refinery, ſhall be removed in any veſſel, waggon, cart, or carriage in which any ſalt of any other deſcription, or for any other purpoſe ſhall be put; on pain of forfeiting the ſame, together with the package, which may be ſeized by any ſuch officer. *ſ.* 75. Rock ſalt delivered duty free, not to be removed along with other ſalt.

And every maker, refiner, or dealer in ſalt may provide export warehouſes at *Liverpool* or *Briſtol* for keeping therein ſalt intended for *exportation*, provided that the ſame be ſecurely built, and have not more than one door or entrance into the ſame, and that there be no other communication between any ſuch warehouſe and any other place whatſoever; and that no ſuch warehouſe be leſs than 20 yards diſtance from any other warehouſe uſed for keeping ſalt, and be not uſed until entry in writing thereof be made at the next exciſe office. *ſ.* 31. Warehouſes for ſtoring ſalt for exportation.

And every ſuch warehouſe ſhall be locked up by the proper officer, except when he ſhall be attending for depoſiting ſalt therein, or delivering ſalt out for exportation. *ſ.* 32. Such warehouſes to be locked.

And no ſalt ſhall be delivered duty free for *exportation*, except from the warehouſe or other place belonging and adjoining to the ſalt work or refinery where made or refined, or from ſuch export warehouſe as aforeſaid, and according to the directions of this act. *ſ.* 74. Delivering ſalt for exportation.

And no rock ſalt ſhall be *exported* on payment of the low duty, except the ſame be delivered out of the warehouſe belonging and adjoining to the mine or pit from whence taken; and ſhall be conveyed immediately from ſuch warehouſe to the port from whence the ſame is intended to be exported, and ſhall be put on board the veſſel in which the ſame is intended to be exported, and ſhall not be landed or put into any warehouſe or place

place in *Great Britain*, except in caſe of unavoidable neceſſity; on pain of forfeiting the ſame. *ſ.* 58.

Notice to be given of delivering ſalt for exportation, or for curing fiſh, &c.

And when any ſuch maker, refiner, or proprietor ſhall have occaſion to deliver ſalt for *exportation*, or for *curing fiſh*, or to be conveyed to any ſuch export warehouſe as aforeſaid, he ſhall give two hours notice thereof in writing to the proper officer, and ſhall ſpecify therein the day and hour when he intends to weigh and deliver ſuch ſalt, and the quantity thereof; and if intended for immediate exportation, ſhall ſpecify at what port ſuch ſalt is intended to be ſhipped, and by what conveyance the ſame is to be carried to ſuch port, and if intended to be removed to any ſuch export warehouſe as aforeſaid, what warehouſe, and the name of the owner thereof, and by what conveyance intended to be removed; or if ſuch ſalt be intended for *curing fiſh*, then he ſhall ſpecify in ſuch notice the name of ſuch fiſh cured, and the place to which the ſame is to be ſent, and by what conveyance. *ſ.* 61.

Whether the veſſel is incapable of receiving the whole quantity intended.

Provided, that where the veſſel in which ſuch ſalt is intended to be conveyed ſhall be incapable either from want of water or other unavoidable circumſtance, to convey the whole quantity of ſalt ſpecified in ſuch notice, in that caſe, ſuch maker, refiner, or proprietor may diſcontinue ſuch weighing or delivery, upon giving notice in writing to ſuch officer, ſpecifying therein the real cauſe, and true quantity of ſalt ſo weighed and delivered. *ſ.* 62.

Bond to be given.

And before any ſuch ſalt ſhall be delivered duty free, or rock ſalt on the low duties for *exportation*, ſuch maker, refiner, or proprietor ſhall give bond in treble the amount of the duty, that all ſuch ſalt ſo to be delivered ſhall be immediately exported, and that no part thereof ſhall be delivered for home conſumption, or otherwiſe fraudulently diſpoſed of in *Great Britain*. *ſ.* 63.

How diſcharged.

And ſuch bond ſhall be diſcharged upon ſuch maker, refiner, or proprietor, leaving with the officer where delivered within two months, a certificate under the hand of the officer where ſhipped, teſtifying that ſuch ſalt was duly ſhipped for *exportation* as by this act preſcribed. *ſ.* 64.

Where on its arrival at Liverpool, &c. it cannot be taken on board.

And if on the arrival at *Liverpool* or *Briſtol* of ſuch ſalt for *exportation* (rock ſalt excepted) the veſſel in which the ſame was intended to have been exported ſhall have ſailed, or for want of ſtowage or other cauſe the ſame cannot be taken on board, the owner upon giving 12 hours notice in writing to the officer, and duly obſerving

the

the regulations herein prescribed, may deliver such salt into any such export warehouse, and upon certificate of such officer the bond given for exporting the same shall be cancelled. *s.* 65.

Notice to be given of delivering salt from export warehouses for exportation.

And when any proprietor of any such export warehouse shall have occasion to deliver salt therefrom for *exportation*, he shall give six hours notice in writing to the proper officer, specifying therein the day and hour when he intends to weigh and deliver the same, and the quantity thereof, and the name of the vessel, and the master thereof, and to what place such salt is intended to be exported. *s.* 66.

An account of stock in export warehouses to be taken annually.

And the officer shall in *June* yearly, weigh and take an account of all the salt remaining in any such export warehouse as aforesaid, and if it shall appear that the whole quantity delivered since taking the last preceding account, added to the quantity then remaining, falls short of the quantity delivered or deposited in such warehouse, the proprietor shall for such deficiency forfeit 12 s. for every bushel, one-sixth part to the officer, and the remainder to his majesty: but if instead of a deficiency there shall appear an increase on taking such account, the same shall be deemed part of the depending stock, and shall be carried forward as part of the established stock of salt in such warehouse. *s.* 67.

Rock salt for refining or exportation, and salt for exportation and curing fish not to be removed in the same vessel, &c. with other salt.

And no rock salt delivered duty free for refining, or upon the low duties for *exportation*, or salt delivered duty free for *exportation* or for *curing fish*, shall be removed in any flat, barge, boat, or other vessel, or in any waggon, cart, or other carriage, in which salt of any other description, or for any other purpose shall be put or laid, on pain of forfeiting the same, which together with the package may be seized by any such officer. *s.* 75.

Previous notice to be given of shipping salt for exportation.

And before any salt shall be shipped for *exportation*, the shipper or exporter shall give six hours previous notice in writing to the proper officer, specifying therein the quantity of salt, the name of the ship and of the master, and the port to which such salt is consigned, and shall also before shipping, give bond (in which the master shall join) in treble the value of the duty, that the same shall be duly exported, and shall not be relanded in *Great Britain*. *s.* 76.

To be weighed and shipped in the presence of an officer.

And all such salt shall be weighed and shipped in the presence of an officer, who, on being satisfied that all such salt hath been duly shipped for *exportation*, shall give a certificate specifying the quantity and species of salt so

ſhipped, and alſo the name of the perſon from whom ſuch ſalt was brought, together with the date and number of the permit, and the day when ſo ſhipped as aforeſaid. *ſ.* 77.

Salt ſhipped for exportation, being unſhipped or relanded.

And if any ſalt entered and ſhipped for *exportation*, ſhall be unſhipped or laid on land, or put into any other veſſel (ſhipwreck or unavoidable accident excepted) then, and in every ſuch caſe, over and above the penalty of ſuch bond as aforeſaid, all ſuch ſalt, or the value thereof, ſhall be forfeited, together with the package, and alſo the veſſel from or out of which ſuch ſalt ſhall be taken, which may be ſeized by any ſuch officer. *ſ.* 81.

Salt for curing fiſh may be imported.

Provided, that any known *fiſh curer* may import ſalt and lodge the ſame in his entered warehouſe, free of the duty on foreign ſalt, for the ſole purpoſe of *curing fiſh*, not leſs than 50 buſhels at one time, upon the conditions, and ſubject to ſuch rules and reſtrictions as is provided with reſpect to *Britiſh* ſalt delivered to fiſh curers duty free. Provided that ſuch foreign ſalt be duly entered upon importation with the proper officer. *ſ.* 12.

Fiſh curers to make entry.

And before any perſon ſhall receive any ſalt duty free for *curing fiſh*, he ſhall make entry in writing at the next exciſe office, of his name and place of abode, and of the number and ſituation of his warehouſes or places for keeping ſalt, which ſhall be good and ſecure, and approved on in writing by the officer of the diſtrict. *ſ.* 92.

Treaſury may permit ſalt to be delivered to certain fiſh curers without entry.

And the lords of the treaſury may upon ſuch terms as they think expedient, permit ſalt to be delivered duty free for *curing fiſh*, to any perſon intending to ſalt fiſh, and reſiding at any place where the inhabitants thereof have uſually been before the paſſing of this act, allowed to receive ſalt for the purpoſe of curing fiſh, although ſuch perſons may not be provided with ſuch warehouſes, or have made ſuch entry as aforeſaid. *ſ.* 93.

Before ſalt ſhall be delivered for curing fiſh bond to be given.

And before any ſalt ſhall be delivered duty free for *curing fiſh*, the maker, refiner, or proprietor of the ſalt work from which the ſame ſhall be delivered, or the merchant on whoſe account ſo delivered, ſhall give bond in double the amount of the duty (in which bond the maſter or owner of the veſſel in which ſuch ſalt ſhall be carried ſhall join), that all ſuch ſalt (danger of enemies excepted) ſhall be delivered to the fiſh curer to whom conſigned, and ſhall not before ſuch delivery, be ſold for home trade or conſumption, or fraudulently diſpoſed of in *Great Britain*. 38 *G.* 3. *c.* 89. *ſ.* 68. 39 *G.* 3. *c.* 65. *ſ.* 5. 7.

And

And ſuch bond may be diſcharged, upon certificate under the hand of the proper officer, that ſuch ſalt hath been duly delivered to ſuch *fiſh curer*; and ſuch certificate been left within three months with the proper officer. 38 *G.* 3. *c.* 65. *ſ.* 69. 39 *G.* 3. *c.* 65. *ſ.* 6. 8. How ſuch bonds may be diſcharged.

And every *fiſh curer* and other perſon, before he ſhall be allowed to receive ſalt duty free, ſhall give bond that all the ſalt received by him ſhall be conſumed in curing fiſh, or delivered over to ſome other fiſh curer for curing fiſh, and that ſuch ſalt ſhall not be uſed in any other manner; and that he will in *May* yearly deliver to the proper officer, an account of the true quantity of ſalt which he hath received into his cuſtody duty free during ſuch year, and the quantity conſumed in curing fiſh, and the quantity of every kind of fiſh by him cured with ſuch ſalt, and likewiſe the quantity of ſalt delivered over to any other fiſh curer, with the name of ſuch perſon, and the time when delivered, and that he will produce and weigh in the preſence of an officer all the ſalt then in his cuſtody. And every ſuch fiſh curer and other perſon, who ſhall receive ſalt duty free as aforeſaid, ſhall verify his account upon oath before the proper officer of exciſe, on pain of forfeiting treble the value of all the ſalt delivered to him within 12 months laſt preceding. 38 *G.* 3. *c.* 68. *ſ.* 94. 95. Bond to be given by fiſh curers, &c. An account to be taken yearly, and verified upon oath.

And ſuch bond ſhall be renewed at every time ſuch *fiſh curer* or other perſon ſhall or ought to have delivered ſuch account, and on his neglect or refuſal, he ſhall forfeit all the ſalt in his cuſtody, with the packages, which may be ſeized by any ſuch officer. *ſ.* 96. Such bonds to be renewed.

And before any ſalt brought from any ſalt work ſhall be delivered to any *fiſh curer*, he ſhall give two days notice to the officer to attend and ſee the ſame weighed and delivered, which ſhall be depoſited in his entered warehouſe in the preſence of ſuch officer, who ſhall give to ſuch fiſh curer a certificate of the quantity thereof, and the day, name, and place of abode of the perſon to whom delivered, and alſo the name of the perſon from whom brought, and the number and date of the permit. *ſ.* 97. Before ſalt be delivered to fiſh curers, notice to be given.

And if any *fiſh curer* or other perſon into whoſe cuſtody any ſalt ſhall be delivered duty free for *curing fiſh*, ſhall ſell, deliver, or give away any ſuch ſalt except to ſome other fiſh curer ſubject to the directions of this act, and for curing fiſh; or ſhall uſe or conſume any ſuch ſalt for any other purpoſe except for curing fiſh; or ſhall ſuffer or cauſe any ſuch ſalt to be ſold, delivered, given away, Diſpoſing of ſalt delivered to fiſh curers for any other purpoſe.

uſed or employed contrary to the true meaning of this act, he ſhall forfeit 40s. for every pound thereof, or 100l. at the option of the attorney general, or perſon who ſhall ſue; and in default of payment, ſuch offender ſhall be committed to the houſe of correction to hard labour for not exceeding ſix months. *ſ.* 98.

One fiſh curer may deliver ſalt to another fiſh curer on giving notice.

Provided, that every fiſh curer who hath received any ſalt duty free for *curing fiſh*, may deliver any part thereof to any other entered fiſh curer, upon notice thereof in writing being given to the proper officer within 48 hours after being ſo delivered, ſpecifying therein the day when delivered, and the name and place of abode of the fiſh curer from whom and to whom delivered, ſuch notice to be ſigned by ſuch fiſh curers reſpectively. *ſ.* 99.

Fiſh curers receiving ſalt to be chargeable therewith.

And the *fiſh curer* to whom ſuch ſalt ſhall have been ſo delivered as aforeſaid, ſhall be charged with the ſame, and if any diſpute ſhall ariſe whether ſuch ſalt ſhall have been ſo delivered, the proof thereof ſhall lie on the fiſh curer delivering the ſame. *ſ.* 100.

Fiſh curers to produce the fiſh cured to the officer.

And every *fiſh curer* ſhall produce to the officer perfectly cured, all fiſh by him ſo cured, and for which he intends to take credit in his yearly account, and ſuch officer ſhall thereupon take an account by the tale, gauge, weight, or otherwiſe of the quantity and ſpecies thereof, and ſhall enter the ſame in a book; and if the fiſh produced be dried or unpacked cod, ling, or hake, ſuch fiſh curer ſhall in the preſence of ſuch officer, punch one hole through the tail of each fiſh; but if herrings, pilchards, or wet fiſh, or other fiſh packed in caſks, then ſuch officer ſhall brand each caſk in ſome conſpicuous part with the letters B. F. And every ſuch fiſh curer before any ſuch caſk be produced to the officer, ſhall brand on every ſuch caſk in large, legible, and permanent characters, his name, and the year when ſo produced; and if he ſhall produce any ſuch fiſh or caſk not ſo marked or holed in the tail as aforeſaid, he ſhall forfeit all ſuch fiſh, which may be ſeized by any ſuch officer. *ſ.* 103.

Rates at which ſalt for curing fiſh ſhall be allowed.

And ſalt for curing fiſh ſhall be allowed at the following rates:

For every hundred weight of cod, ling, or hake, 50 pounds of ſalt.

For every barrel containing 32 gallons of wet cod, ling, or hake, 56 pounds of ſalt.

For ditto 42 gallons of ſalmon, 36 pounds of ſalt.

For ditto 32 gallons of white herrings, 140 pounds of ſalt.

For every barrel containing 32 gallons of red herrings, 65 pounds of ſalt.

For ditto 32 gallons of clean ſhotten red herring, 56 pounds of ſalt.

For every laſt conſiſting of 1000 dried red ſprats, 25 pounds of ſalt.

For every caſk containing 50 gallons of pilchards or ſeads, 280 pounds of ſalt.

For ditto 32 gallons of mackrel, 84 pounds of ſalt.

And ſo in proportion for any greater or leſs quantity. *ſ.* 104.

Barrels how to be gauged.

And every barrel, caſk, or veſſel in which fiſh, beef, or pork entitled to any bounty ſhall be packed, ſhall be gauged according to the gallon *Engliſh* wine meaſure. *ſ.* 5.

Where on taking ſtock a deficiency ſhall be found.

And if in taking an account of and balancing the ſtock of ſalt in the cuſtody of any *fiſh curer* in the month of *May* as aforeſaid, there ſhall appear to be any deficiency in the quantity he received in the laſt preceding year, making an allowance for what he hath delivered to any other fiſh curer, and alſo in the proportion aforeſaid for ſalt conſumed in curing fiſh and produced as aforeſaid; in ſuch caſe all the ſalt ſo deficient ſhall be deemed ſalt illegally diſpoſed of or miſapplied, and he ſhall forfeit 12*s.* for every buſhel, to be paid to the commiſſioners of exciſe, and ſhall be applied five-ſixths to his majeſty, and the remaining one-ſixth to the officer who ſhall diſcover ſuch deficiency. *ſ.* 105.

Foul fiſhery ſalt may be uſed for manuring land.

And whereas it ſometimes happens that ſalt employed in curing fiſh after being repeatedly applied to the fiſh becomes ſo foul as to be entirely unfit for that purpoſe, which ſalt has heretofore in certain places and under certain reſtrictions been uſed in the manuring of land; it is enacted, that the lords of the treaſury may by ſpecial warrant, upon ſuch conditions, and under ſuch reſtrictions as they ſhall think expedient, authorize the commiſſioners of exciſe to permit any entered *fiſh curer*, reſiding at any place where immediately before the paſſing of this act foul fiſhery ſalt was uſually ſold for manuring land, to ſell ſuch of this fiſhery ſalt for that purpoſe as hath become ſo foul as to be utterly unfit to be uſed again for curing fiſh. Provided that any perſon whether a fiſh curer or not, who ſhall be convicted before one neighbouring juſtice of wilfully and knowingly ſelling or uſing, or ſuffering any ſuch foul fiſhery ſalt to be diſpoſed of for any other purpoſe than that of manuring

land; or of selling or using any salt for manuring land, except such dirty and foul salt as shall be totally unfit for curing fish, he shall for every such offence forfeit 100l. and for ever afterwards be excluded from the benefit of selling or using foul fishery salt for manuring of land. *s.* 106.

Bonds and certificates not subject to stamp duty.

And no bond or security taken for salt to be used in *curing fish*, nor certificate made out in relation to any such salt, shall be subject to any stamp duty. 38 *G.* 3. *c.* 89. *s.* 107. 39 *G.* 3. *c.* 65. *s.* 10.

Salted fish, beef, and pork, may be exported.

And such *fish curer* or other person entitled to any such dried or wet ling or other fish aforesaid, which shall be *British* taken; and also *beef* and *pork* salted in *England* with salt for which the duties hereby imposed have been paid, may be *exported* by way of merchandize upon the terms herein specified. 38 *G.* 3. *c.* 89. *s.* 108, 9, 10, 11, 12, 13.

Unshipping fish, beef, or pork, entered for exportation.

And if any fish, beef, or pork entered or shipped for *exportation*, with intent to obtain the bounty hereby granted, shall be unshipped or laid on land, or put into any other vessel (shipwreck or other unavoidable accident excepted), then over and above the penalty of such bond all such fish, beef and pork, or the value thereof, shall be forfeited, together with the packages, and also the vessels out of which and into which the same shall be taken or put, which may be seized by any such officer. *s.* 114.

Salt may be carried coastwise.

And when any dealer in or seller of salt, or other person shall have occasion to remove salt *coast wise*, such person on making oath before the proper officer of excise, that all the salt so intended to be removed was received into his custody with a legal permit, and that the duty hath been duly paid or secured, and upon the delivery of a request note as herein directed, shall be entitled to a permit to accompany such salt coastwise. *s.* 82.

Master before landing to produce a permit.

And the master of every vessel having salt on board to be carried from one place in *Great Britain* to another, shall before he begin to unship the same produce and leave with the proper officer a permit, and shall make oath before such officer that to the best of his knowledge and belief, no salt hath been put on board since such ship sailed from the place at which the salt mentioned in such permit was shipped, and that he believes no salt hath been put on board, except that specified in such permit. *s.* 83.

And

And every ſuch maſter, having any ſalt on board, ſhall, when required by any officer, cauſe the ſame to be weighed out of ſuch veſſel in the preſence of an officer, who ſhall take an account thereof: and if ſuch maſter ſhall neglect or refuſe to leave with ſuch officer ſuch permit as aforeſaid, or to make oath as aforeſaid, or to weigh out of his veſſel all the ſalt on board the ſame as aforeſaid, he ſhall forfeit 100l. *ſ.* 84. And ſhall cauſe ſuch ſalt to be weighed.

And the maſter or perſon having the command of any flat, barge, boat, or other veſſel in which any ſalt ſhall be laden, before he remove any part thereof into any other ſuch veſſel, ſhall produce to the proper officer a permit for the ſame, and ſhall if required weigh ſuch ſalt in the preſence of ſuch officer, on pain of forfeiting 100l. *ſ.* 85. Removing ſalt out of one veſſel into another.

And all ſalt imported from *Scotland* without a legal permit teſtifying that all the duties payable in *Scotland* have been paid, ſhall be forfeited, together with the packages, ſhips, boats, and other veſſels, waggons, carts, and other carriages, horſes and cattle employed in removing the ſame, which may be ſeized by any ſuch officer; and the perſon in whoſe cuſtody ſuch ſalt ſhall be found, or employed in removing the ſame, ſhall forfeit 50l. *ſ.* 86. Importing ſalt from Scotland.

And no ſalt ſhall be removed from *Scotland* to *England* by land, on pain of forfeiting the ſame, together with the packages, waggons, carts, carriages, horſes, and cattle employed in removing thereof, which may be ſeized by any ſuch officer; and every perſon concerned in removing the ſame contrary to the directions of this act, ſhall forfeit 40s. for every pound weight thereof, or 100l. at the election of the attorney general or perſon who ſhall ſue. *ſ.* 87. Not to be removed by land.

And the maſter of every veſſel in which any ſalt ſhall be brought from *Scotland* into *England*, ſhall immediately on his arrival at the place to which ſuch ſalt is conſigned, and before he unſhip the ſame, produce and leave with the proper officer, a certificate under the hand of the officer in *Scotland* teſtifying that the duties have been paid at the mine or pit where raiſed, and ſhall make oath before ſuch officer, that ſuch ſalt is the identical ſalt mentioned in ſuch certificate, and that no other ſalt has to his knowledge and belief been put on board ſince the ſalt mentioned in ſuch certificate was put on board, and ſhall pay to the officer all the duties by this act impoſed on ſalt brought from *Scotland* to *England* with ſuch certificate, Oath to be made that it is the identical ſalt mentioned in the certificate.

cate, and shall forthwith weigh, unship, and deliver the same in the presence of such officer; and in default thereof, shall for every such offence forfeit 100l. together with such salt and packages, and also the vessel, which may be seized by any such officer. *s.* 88.

Glass makers may take salt for making mineral alkali or flux for glass.

And every maker of *glass* may take rock salt from any warehouse belonging to any salt mine, or brine or sea water for making *mineral alkali* or *flux for glass*, upon bond being given that the same shall be so employed; such bond to be discharged upon oath being made before the collector, that all such rock salt, brine, or sea water, for which the same was given, was made use of in making such mineral alkali or flux for glass, and for no other purpose whatsoever. *s.* 116.

Entry to be made of workhouses, &c. for making the same.

And every person before he begin to make *mineral alkali* or *flux* for *glass*, shall make entry in writing of every workhouse, warehouse, storehouse, room, or other place, and also of every utensil or vessel by him intended to be used therein, at the excise office of the district. And if any such person shall begin to make any mineral alkali or flux for glass, without making such entry, he shall forfeit 100l. together with such mineral alkali or flux for glass, and all materials proper for making the same, together with the utensils and vessels used therein, found in any unentered place. *s.* 117.

No rock salt to be delivered but in the presence of an officer.

And no such rock salt shall be delivered out of such entered warehouse for the purpose of making *mineral alkali* or *flux for glass*, or shall be afterwards delivered at such alkali works, or be deposited in any warehouse or place belonging thereto, but in the presence of an officer, who shall make an entry in writing, containing the weight or quantity thereof, and the day when so delivered, and the name of the maker of glass to whom delivered, and for the use of what works. *s.* 119.

If less in quantity than specified in the permit.

And in case the rock salt so brought to be stored in any such *alkali works* shall be less in weight or quantity than specified in the permit, the maker for whose use the same was delivered, shall be answerable for the same. *s.* 120.

Using rock salt delivered for making mineral alkali for any other purpose.

And if any such maker on whose account such rock salt shall have been delivered as aforesaid, or if any other person shall use the same or any part thereof, or any acid materials to be produced therefrom, after being used in making such mineral alkali or flux for glass as aforesaid for any other purpose, he shall forfeit 100l. *s.* 121.

Officers may enter warehouses.

And any officer of excise may enter any such workhouse or place made use of by any such manufacturer of *mineral*

alkali

alkali or *flux for glaſs*, and if ſuch manufacturer ſhall upon demand in the day time (and if in the night in the preſence of a conſtable or other peace officer) refuſe to permit ſuch officer to enter, he ſhall forfeit 50l. *ſ.* 122.

Provided always, that nothing herein ſhall extend to impoſe any duty on ſuch *Glauber ſalts* as ſhall be made by any glaſs maker in any of the proceſſes of making mineral alkali or flux for glaſs, and which ſhall be *bona fide* expended and conſumed in making ſuch mineral alkali or flux for glaſs. *ſ.* 123. Duty not to extend to Glauber ſalts.

And whereas ſalt is an eſſential ingredient in making *oxiginated muriatic acid* uſed for bleaching of linen and cotton, and the allowing a drawback on ſalt uſed for that purpoſe would promote the manufacture thereof; it is enacted, that the whole duties now payable on ſalt of *Britiſh* manufacture ſhall be drawn back for all ſalt conſumed in making any ſuch oxiginated muriatic acid as aforeſaid: Provided, that no ſuch drawback ſhall be granted for more or other ſalt than ſhall be mixed with vitriolic acid, manganeſe and water, in the preſence of an officer, and in the proportion of at leaſt 20 pounds of vitriolic acid, 20 pounds of manganeſe, and 10 pounds of water to every 56 pounds of ſalt. Nor ſhall any ſuch drawback be granted to any perſon not being a bleacher of linen or cotton, nor unleſs he make entry in writing of every workhouſe or place intended to be uſed in making ſuch oxiginated muriatic acid as aforeſaid at the next exciſe office: Provided alſo, that any officer of exciſe may at all times by day or night upon requeſt, enter into any ſuch workhouſe or other place uſed by ſuch bleacher, and by weighing, gauging, or otherwiſe, take an account of all ſalt therein, and of the ſtate of operation of ſuch oxiginated muriatic acid. *ſ.* 89. Drawbacks to be made on Britiſh ſalt uſed in making oxiginated muriatic acid for bleaching linen.

But no officer ſhall be obliged to attend the mixture of ſuch ſalt and other ingredients oftener than once in every ſeven days, and upon 48 hours notice in writing by ſuch bleacher, ſpecifying the day and hour when ſuch mixture is to be made, and the quantity of ſalt intended to be uſed, and if he ſhall not begin to mix ſuch ingredients in the preſence of ſuch officer within half an hour, ſuch notice ſhall be void, and he ſhall not be obliged to attend again without a freſh notice. *ſ.* 90. Officer not obliged to attend the mixing of ſalt at bleaching grounds oftener than once in ſeven days.

And upon ſuch officer attending and ſeeing any quantity of ſalt not leſs than one buſhel mixed as aforeſaid, Officer may grant a certificate to the

bleacher, whereupon he shall have an allowance of the duty, deducting 7½ per cent.

and upon receiving a permit for such salt, and being satisfied that the duties have been duly paid, he shall give to the bleacher entitled to receive the same, a certificate specifying the quantity of salt so mixed, which upon being produced to the proper collector, and making oath that all the salt mentioned in such certificate hath been *bonâ fide* used in making such oxiginated muriatic acid as aforesaid, for the sole purpose of bleaching linen and cotton, and that he believes the duties have been paid, and that no drawback hath been allowed, the said collector or commissioners of excise shall thereupon allow to such bleacher the amount of the duty so paid and specified in such certificate, deducting at the rate of 7½ *per cent.* for the increase of weight of salt by the moisture of the air. *s.* 91.

Owners of brine springs at Long Benton may make mineral alkali.

Provided, that the owners or proprietors of certain brine springs or salt water at *Long Benton* in *Northumberland* may make mineral alkali from the brine or water of the said springs at their works there, and also at *Newburn* in the said county; upon the conditions, and according to the regulations herein contained, that is to say, that the owners shall make entry in writing at the next excise office, of every workhouse, warehouse, and place, and utensil and vessel by him intended to be used in making and keeping such mineral alkali or materials for making the same; on pain of forfeiting 100*l.* together with all the mineral alkali there found: Provided also, that such owner clear off the duty payable thereon, at such times, and under such penalties as herein directed. *s.* 124.

Officers may enter warehouses and take an account.

And any such officer may enter by day or night upon request every such workhouse or place used for making *mineral alkali*, and by weighing, gauging, or otherwise to take an account of all the mineral alkali made or making therein. *s.* 125.

Penalty for having common salt or glauber salt in his custody.

And if any such owner or occupier shall manufacture any common salt, or glauber or *Epsom* salts, or shall knowingly have in his custody any common salt exceeding two bushels, or glauber or *Epsom* salt exceeding one pound, the same shall be forfeited and may be seized by any such officer; and he shall also forfeit 500*l.* *s.* 126.

Not to extend to kelp, &c.

Provided that nothing herein shall prevent the manufacture of *kelp*, *barcilla*, or *flux for glass* made in *Great Britain* by the incineration of plants. *s.* 127.

Where salt is lost the quarter sessions may grant relief.

And whereas it may sometimes happen that salt may be lost by stress of weather and also the vessel; it is enacted, that

that in case any salt for which the duties have been paid, or been delivered on bond duty free, shall be lost by stress of weather or other unavoidable accident, [or be taken by the enemy, 39 *G.* 3. *c.* 65. *s.* 12.] the owner, or shipper may make application in writing for relief to the nearest quarter sessions, or to the commissioners of excise in *London*, who may receive the same and examine all parties, and on due proof of the fact by two witnesses, (one of which shall be the master or mate of such vessel if living at the time,) may grant their warrant to the collector of excise, requiring him in case the salt lost be salt for which the duties have been paid, to allow to the owner of such salt the full amount of such duties; and if salt delivered upon bond duty free, or rock salt upon the low duties for exportation, to cancel such bond. Provided, that such bond shall remain in force as to all salt which shall not be so proved to be lost, and which shall not be particularly specified in such warrant. Provided also, that no such application for relief shall be proceeded upon nor warrant granted, unless the owner or shipper, or some person on his behalf, give notice in writing to the commissioners of excise in *London*, or collector of the nearest collection, within one month after such accident happened, nor unless it be specified in such notice when and where the loss happened, and by what accident occasioned; nor unless the name and place of abode of the owner or shipper, the time when, and the place where shipped, and to whom consigned, and also the quantity shipped, be specified in such notice, and also whether it was salt for which the duty had been paid, or which had been delivered on bond, and the name of the vessel, and of the commander thereof. Nor shall such application be proceeded upon, nor such warrant be granted, unless it appear upon the face of the application, and be proved on oath, that the storm or accident happened within six months preceding; nor unless notice in writing of the time and place of hearing be given to the said commissioners if in *London*, or to the collector nearest to the place where such quarter sessions shall be held if heard in the country, at least six days before such hearing. *s.* 115.

No person concerned in salt works, to act as a justice, in matters relating to salt.

And no person being a maker, refiner, or proprietor of salt works or interested therein, shall act as a justice of the peace in any matter or thing whatsoever, which may any wise concern the execution of this or any other act relating to salt, but all things done by any such person shall be null and void. *s.* 128. And

Value of salt to be taken as at London.

And in all cases where it shall be necessary to ascertain the value of salt, the same shall be taken at the highest price at which the same shall sell for in *London*. *s.* 129.

Forging certificates, &c.

And if any person shall counterfeit or forge, or cause to be done, any certificate or debenture, with intent to defraud his majesty, he shall be guilty of felony, and be transported for seven years. *s.* 131.

Obstructing officers.

And if any person shall obstruct any officer in the due execution of his office, or shall by force rescue, or attempt to rescue any salt, vessel, boat, horse, cattle, cart, or carriage, shall for every such offence for which no penalty is particularly provided by this act, forfeit 200 l. *s.* 133.

Offering bribes.

And if any person shall offer or give any bribe to any such officer in order to corrupt him in the execution of his office, or to connive at or conceal any fraud relating to the duties on salt, whether such proposal be accepted or not, shall forfeit 500 l. *s.* 134.

Recovery and application of penalties.

And all fines, penalties, and forfeitures hereby imposed relating to the duties on salt, may be sued for, recovered, levied, and mitigated as by the laws of excise (*a*) or in the courts of *Westminster*, and shall be applied half to the king (except where otherwise expressed) and the other half to him who shall sue. *s.* 136.

Former acts to continue in force except hereby altered.

Provided, that nothing in this act contained shall extend to repeal or alter any act in force relating to the duties on salt immediately before the passing of this act, except so far as the same is revoked or altered, or repugnant thereto, but all the provisions, regulations, penalties, and forfeitures thereby imposed (except as aforesaid) shall remain in full force. *s.* 140.

12 C. 2. c. 24. to extend to this act.

And all powers of 12 *C.* 2. *c.* 24. shall extend to this act. *s.* 142.

Sessions may fix the price of salt.

And the lord mayor and aldermen of *London*, and the justices of the peace at their respective general sessions, may set, ascertain and publish the price of salt to be sold or exposed to sale (and not intended for exportation) within their respective counties, cities, and places, and may alter the same as they may see occasion: and the prices so set or altered are to be observed by every person selling or exposing salt for sale. And if any person shall sell any

---

(*a*) See the manner of recovering those penalties *ante*, title Excise in general.

salt

ſalt (except for exportation) at any higher price, or refuſe to ſell at the price ſo fixed as aforeſaid, he ſhall forfeit 20 l. to be levied by diſtreſs, by warrant of one juſtice, and in default of ſufficient diſtreſs, ſuch juſtice may impriſon ſuch offender until he ſhall pay the ſame, to be applied half to the king and half to him who ſhall ſue. *ſ.* 143.

XV. Soap.

Officers for the duties on ſoap.

The commiſſioners of the treaſury ſhall appoint commiſſioners for the duty on ſoap made in the kingdom; who ſhall ſubſtitute inferior officers. 10 *An. c.* 19. *ſ.* 5.

Who only ſhall be permitted to make ſoap.

No perſon, within the limits of the head office of exciſe in *London*, ſhall be permitted to make any ſoap, unleſs he occupy a tenement of 10 l. a-year, and be aſſeſſed to and pay the pariſh rates; and elſewhere, unleſs he be aſſeſſed to and pay to church and poor. 17 *G.* 3. *c.* 52. *ſ.* 1.

Soap makers to be licenſed.

Every *ſoap maker* ſhall take out a licence from the exciſe officers, for which he ſhall pay 2 l. and ſhall renew the ſame annually, ten days at leaſt before the end of the year, on pain of forfeiting 20 l. 24 *G.* 3. *c.* 41. *ſeſſ.* 2. *ſ.* 1. 7.

Perſons in partnerſhip.

But perſons in partnerſhip need only take out one licence for one houſe. *ſ.* 8.

Importation.

By 27 *G.* 3. *c.* 13. *Sched.* (F), certain duties are laid on ſoap imported, as particularly ſet forth in a table annexed to the act.

Exportation.

And upon the exportation of ſoap made in *Great Britain*, and which hath paid the duties, the ſame ſhall be drawn back. *Id.*

Home duty.

And by the ſaid act the following duties are impoſed on ſoap made in *Great Britain*, (viz.)

	d.
For every pound of *hard cake ſoap*, or *ball ſoap* -	2¼
For every pound of *ſoft ſoap* - -	1¾

The ſaid duties to be paid by the maker.

Allowance if uſed in manufactures.

And the following allowances ſhall be made for ſoap uſed in the manufactures in *Great Britain*, (viz.)

For every pound of *hard cake ſoap*, or *ball ſoap* uſed in making cloths, ſerges, kerſeys, bays, ſtockings, or other manufactures of ſheep or lambs wool only, or whereof the greateſt part of the value of the materials ſhall be wool, or in the finiſhing the ſaid manufactures, or preparing the wool for the ſame - - - - 1½

For every pound of *ſoft ſoap* uſed in like manner 1½

And

	d.
And for every pound of *hard cake ſoap* or *ball ſoap* uſed in whitening of new linen in the piece for ſale	1¼
For every pound of *ſoft ſoap* uſed in like manner	0¾

Place of making to be entered.

And no maker of ſoap ſhall ſet up, alter, or uſe any boiling-houſe, workhouſe, warehouſe, ſtorehouſe, ſhop, room, or other place for the making or keeping of ſoap, or for the boiling or keeping any oil, tallow, pot-aſh, lime, or other materials proper to be made into ſoap; or uſe any copper, kettle, furnace, fat, ciſtern, trough, or other veſſel for the boiling or making of ſoap, without firſt giving notice thereof in writing, at the next office for the ſaid duties; on pain of 50 l. 10 *An.* *c.* 19 *ſ.* 6.

And all ſoap, oil, tallow, and other materials, which ſhall be found in any private boiling-houſe, workhouſe, warehouſe, or other place, and all private coppers, kettles, furnaces, troughs, and other veſſels, for which no entry ſhall be made, or notice given, ſhall be forfeited, and the value thereof. *ſ.* 19.

Summoning offenders.

And by the 5 *G.* 3. *c.* 43. Whereas offenders frequently withdraw themſelves to avoid the aforeſaid penalty of clandeſtine making of ſoap, it is enacted, that a ſummons left at the place where diſcovery ſhall be made of ſuch offence, directed to the perſon proſecuted by his right or aſſumed name, ſhall be as effectual as if delivered perſonally, and directed to him by his proper name. *ſ.* 19.

Covers and locks to be provided.

And every perſon who ſhall make any *hard* ſoap, [And by 32 *G.* 3. *c.* 21. the ſame is extended to *every* maker of ſoap of what kind or quality ſoever,] ſhall at his own expence provide ſufficient wooden covers (to be approved of in writing by the ſurveyor or ſupervifor) to every copper, pan, or other utenſil, wherein he ſhall boil or make any hard ſoap; which veſſels, with the covers thereto affixed, and alſo the pipes that convey the waſte or ſalt lees from the ſaid coppers, pans, or other utenſils, ſhall be locked and ſealed down by the officer, as ſoon as the fire is damped or withdrawn, whenever any ſoap or any thing of a ſoapy quality ſhall be left therein. Which ſaid locks, and keys to the ſame, and all other neceſſary faſtenings for ſecuring the ſaid veſſels and pipes, ſhall be provided by the ſurveyor or ſupervifor, at the expence of the maker. And if any perſon ſhall make any hard ſoap before he ſhall have affixed ſuch covers, or ſhall refuſe to pay for the locks and keys and other faſtenings as aforeſaid, or ſhall wilfully break or damage any ſuch lock, or ſeal, or other faſtening; he ſhall forfeit 100 l. 5 *G.* 3. *c.* 43. *ſ.* 15. 12 *G.* 3. *c.* 46. *ſ.* 7.

And

And the cover and furnace door and aſh-hole door of every copper, pan, or other utenſil uſed by any maker of hard ſoap, ſhall be ſecurely locked and ſealed down by the officer, at all times except when the ſame ſhall be at work, or ſhall be opened for repairing the ſame, or for the inſpection of an officer; and proper locks and keys and other neceſſary faſtenings for ſecuring the ſaid covers and doors, ſhall be provided by the ſurveyors and ſupervifors, at the expence of ſuch maker; and whenever ſuch maker ſhall be deſirous of opening ſuch copper, pan, or other utenſil, or the furnace or aſh-hole door, he ſhall give, if in *London* 12 hours, elſewhere 24 hours notice thereof to the officer, who ſhall attend to open ſuch doors: And if by any device any perſon ſhall open ſuch copper, pan, or other utenſil, or the furnace or aſh-hole door thereof, after the ſame ſhall have been ſo locked and ſecured; or ſhall wilfully damage or hurt any ſuch lock or other faſtening, he ſhall forfeit 100 l. 24 *G.* 3. *c.* 48. *ſect.* 2. *ſ.* 9. Furnace doors, &c. to be locked.

And the officers ſhall at all times, by day or by night, and without waiting for the preſence of a conſtable, be permitted on requeſt to enter the houſe, boiling-houſe, warehouſe, or other place uſed by any maker of ſoap, and by gauging, weighing, or otherwiſe, take an account of the quantity of ſoap, and alſo of all materials for the making thereof, in the poſſeſſion of ſuch maker, and ſhall be permitted to ſtay in ſuch houſe or other place ſo long as he ſhall think fit; and ſhall make a return thereof in writing to the commiſſioners, or whom they ſhall appoint, leaving a true copy, if demanded, with the maker; and if ſuch officer ſhall refuſe or neglect to leave ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. And if any maker ſhall obſtruct ſuch officer he ſhall forfeit 50 l. *ſ.* 7. 10. Officers to enter and ſurvey.

And by the 17 *G.* 3. *c.* 52. When any copper, pan, or other utenſil, or the furnace doors thereof, ſhall be ſecured as aforeſaid, the ſurveyor, ſupervifor, or other officer, ſhall between the hours of five in the morning and eleven in the evening be permitted on demand to enter every workhouſe of ſuch maker, and may unlock and examine every ſuch copper, pan, or utenſil, and the doors thereof, and after ſuch examination ſhall again lock and ſecure the ſame: And if any perſon ſhall obſtruct the officer herein, he ſhall forfeit 100 l. *ſ.* 9.

No maker ſhall have any private pipe or conveyance, on pain of 200 l. And the officer, in the day time, and in Private pipe or conveyance.

preſence of a conſtable, on requeſt made and cauſe declared, may break up the ground in any ſoap houſe, or the ground near adjoining, or any wall, partition, or other place, to ſearch; and if he finds any ſuch private pipe, or other conveyance, he may break up or cut the ſame: And if any perſon ſhall obſtruct the officer in ſuch ſearch, he ſhall forfeit 100 l. 17 G. 3. c. 52. ſ. 10, 11, 12.

Provided, that if upon ſearch no ſuch pipe ſhall be found, the officer ſhall make good the ground, wall, or other place, or make ſatisfaction to the owner, to be adjudged by the two next juſtices; or he may bring his action for the damages. ſ. 12.

Coppers, &c. to be cleaned.

And the maker ſhall once in every lunar month perfectly cleanſe every copper, pan, or other utenſil, and ſhall give three days notice thereof to the officer: And when cleanſed, the officer may make ſearch; and if he finds any hole not before known, the owner ſhall be liable to the penalties for concealing ſoap (that is, he ſhall forfeit 500 l. 1 G. ſt. 2. c. 36. ſ. 14, 15.), unleſs he ſhall prove that it was made by burſting or other accident ſince the laſt ſurvey, and that he had given notice thereof to the officer who firſt came to ſurvey after ſuch accident happened. And if ſuch maker ſhall neglect to cleanſe his copper, pan, or other utenſil, or to give ſuch notice as aforeſaid, or ſhall obſtruct the officer in ſearching and examining, he ſhall forfeit 50 l. ſ. 14.

To have one moveable pump only.

And no maker ſhall have any pipe or other conveyance from or to any copper or pan made uſe of in boiling ſoap, except one moveable pump for taking out ſalt or ſpent lees, which pump ſhall be taken out of ſuch copper or pan before locked down by the officer; and ſhall not have any cock or hole in the ſide, or curb, or bottom, or cover of ſuch boiler or copper, except ſmall holes to let ſteam through; nor ſhall have any part of the curb moveable, nor ſhall uſe any ſyphon, crane, or trinket, but ſhall take out all lees, ſoap, or other ingredients, by a pump or ladle only; on pain of forfeiting 500 l. 24 G. 3. c. 48. ſeſſ. 2. ſ. 8.

Notice of the time of working.

Every maker of ſoap, before he begins any making, if within the bills of mortality, ſhall give 12 hours, elſewhere 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of (100 l. 24 G. 3. c. 48. ſeſſ. 2. ſ. 12.) And the officer ſhall attend accordingly, and unlock the furnace doors. 11 G. c. 30. ſ. 33. 17 G. 3. c. 52. ſ. 8.

And

And putting lees or lye into the copper or other utenſil, ſhall be deemed a beginning ſuch making, ſo as to ſubject him to the forfeiture. 11 *G.* *c.* 30. *ſ.* 34.

And if the maker ſhall not begin in three hours after the time mentioned in ſuch notice, the ſame ſhall be void; and if he ſhall begin without giving a freſh notice, he ſhall forfeit 100 l. 24 *G.* 3. *c.* 48. *ſeſſ.* 2. *ſ.* 12.

And if the copper or other utenſil be locked or ſealed down, the officer ſhall attend to unlock and open the ſame, after the maker hath given to him 12 hours notice if within the limits of the head office in *London*, and elſewhere 24 hours notice, of ſuch his intention. And if by any contrivance ſuch maker ſhall open any copper, pan, utenſil, or pipe, before the ſame ſhall have been opened by the officer; he ſhall forfeit 20 l. 5 *G.* 3. *c.* 43. *ſ.* 15.

And no maker of hard ſoap ſhall, upon any pretence of cleaning or waſhing any copper, pan, or other utenſil, uſed in boiling of ſoap, or on any other preſence, preſume to light any fire, under the ſame, without firſt giving ſuch notice; on pain of 20 l. *ſ.* 16.

Frames to be made uſe of in working.

Every maker of hard ſoap ſhall make uſe of regular ſquare or oblong frames only, for the cleanſing or putting his ſoap (whether perfect or not perfect) into, when taken out of the veſſel where it was boiled or prepared; and the bottom, ſides, and end of every ſuch frame ſhall be two inches thick at the leaſt; and ſuch frame ſhall not exceed 45 inches in length, nor fifteen inches in breadth; of which frames he ſhall give notice in writing at the next office, before he ſhall uſe the ſame; all which ſaid frames ſhall be marked and numbered by the ſurveyor or ſupervifor, at the expence of ſuch maker; on pain or forfeiting, for every ſuch offence reſpectively, the ſum of 20 l. 5 *G.* 3. *c.* 43. *ſ.* 17.

Reworking ſtale ſoap.

If any ſtale or rotten ſoap, or cuttings, be put into the copper or pan, in preſence of an officer, to be refreſhed or new made; the officer ſhall make allowace of the duty, and certify the ſame upon his report. 10 *An.* *c.* 19. *ſ.* 28.

But if it ſhall be put into any making of ſoap, without giving to the officer 12 hours notice in writing within the bills, and 25 hours elſewhere; there ſhall be no allowance made for it. 11 *G.* *c.* 30. *ſ.* 37.

And if any officer ſhall falſely pretend that he had ſuch notice when he had not, and make and certify ſuch allowance; he, and alſo the maker, ſhall forfeit 10 s. for every pound ſo certified. *ſ.* 38.

Soap not to be returned into the copper.

But no *hard* ſoap (whether perfectly made or not), after the ſame ſhall have been cleanſed or put into the frame,

ſhall on any pretence be returned or put again into the copper or other utenſil, for boiling or reworking; and if it ſhall be ſo returned, it ſhall be charged again with the duties. 5 G. 3. c. 43. ſ. 18.

And the officer ſhall allow to the maker in his charge, one pound in every ten of ſuch hard ſoap; which ſhall be a full compenſation for all waſte, loſſes, or damages. ſ. 14.

Officer to charge for materials miſſing.

And any officer may, as often as he ſhall think fit, by gauging, weighing, or otherwiſe, take an account of all tallow, oil, roſin, and greaſe of every kind, and of all materials for making ſoap, which any maker ſhall have in his poſſeſſion; and ſuch maker ſhall provide proper ſcales and weights, and aſſiſt in weighing and taking ſuch account, on pain of 20l. And in caſe the officer ſhall find any decreaſe in any materials for making ſoap, and ſhall not receive a ſatisfactory account thereof, he ſhall charge the maker with the duties of ſuch decreaſe, according to the rates following; (that is to ſay,) for every 14 hundred weight, or 210 gallons of oil miſſing, 20 hundred weight of hard ſoap.

For every 13 hundred weight of rendered tallow, 20 hundred weight of hard ſoap.

For every 13½ hundred weight of kitchen ſtuff and tallow, 20 hundred weight of hard ſoap.

For every 14 hundred weight of tallow, roſin, and oil miſſing, 20 hundred weight of yellow, brown, or roſin ſoap. 24 G. 3. c. 48. ſeſſ. 2. ſ. 11.

And every ſoap-maker ſhall, before he begins to charge his boiler or copper, weigh, in the preſence of the officer, all the materials he intends to make uſe of and put into the boiler or copper, and in caſe the quantity of hard ſoap afterwards produced therefrom ſhall be found by the gauger in the frames to be leſs than ought to have been produced according to the rates aforeſaid, ſuch deficiency ſhall be charged with the duties thereupon, according to the rates beforementioned; provided, that if ſuch boiler or copper ſhall have been charged with rough fat, or rough kitchen greaſe, then 8lb. of rough fat, ſhall be deemed equal to 7 lb. of tallow, and 5 lb. of rough kitchen greaſe to 4 l. of clean kitchen greaſe. ſ. 13.

Materials to be weighed.

And by 27 G 3. c. 31. Every ſoap maker, when and as often as he ſhall be required by any officer, before he charge his copper or boiler with any materials for making ſoap, ſhall weigh ſuch materials (except lye) in the preſence of the officer, and put the ſame into ſuch copper or boiler; on pain of forfeiting 50 l. ſ. 14.

And

And no maker ſhall (on pain of 20 l.) remove any ſoap of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the ſame. 10 *An.* *c.* 19. *ſ.* 16. Removing ſoap unſurveyed.

And the makers ſhall keep all the ſoap by them made, and not ſurveyed, ſeparate from that which hath been ſurveyed, for 24 hours after making, within the bills, or two days in any other place; unleſs it ſhall have been ſooner ſurveyed; on pain of 5 l. *ſ.* 17. Soap unſurveyed to be kept ſeparate.

And if any maker ſhall conceal any ſoap or materials; he ſhall forfeit the ſame and alſo 500 l. 1 *G. ſt.* 2. *c.* 36. *ſ.* 14, 15. Concealing.

And by the 5 *G.* 3. *c.* 43. If the officer ſhall have cauſe to ſuſpect that ſoap is privately making in any place; or that any ſoap is concealed with intent to avoid the duty; in ſuch caſe, on oath made by ſuch officer before a commiſſioner or one juſtice reſiding near to the place, ſetting forth the ground of his ſuſpicion, ſuch commiſſioner or juſtice may, if he ſhall judge it reaſonable, by ſpecial warrant authorize ſuch officer, by day or night (but if in the night, in preſence of a conſtable) to enter into every ſuch place ſuſpected, and to ſeize and carry away as forfeited all ſuch ſoap as he ſhall there find ſo privately making, together with all materials then ready or preparing for making of ſoap, and likewiſe all ſuch ſoap as they ſhall find ſo concealed, together with the boxes or other package: And the perſon that ſhall be found privately making ſoap, or in whoſe poſſeſſion ſuch ſoap ſhall be found, ſhall forfeit 100 l. *ſ.* 20.

Every barrel of ſoap ſhall contain 256 pounds avoirdupois; half barrel 128; firkin 64; half firkin 32; beſides the weight or tare of the caſk. And all ſoap (except hard cake ſoap, and ball ſoap, 10 *An.* *c.* 26. *ſ.* 111.) ſhall upon making thereof be put by the maker into ſuch caſk, and none other. 10 *An.* *c.* 19. *ſ.* 8. Meaſure of ſoap.

And all ſoft ſoap that ſhall be filled in any other caſk leſs than barrels, half barrels, firkins, and half firkins, ſhall be forfeited, and alſo 5 l. 12 *An. ſt.* 2. *c.* 9. *ſ.* 19.

And no maker ſhall ſell any hard ſoap, but in the form of cakes or bars, or what is called *ball ſoap*; and ſhall return all ſcraps and parings into the boiler in the preſence of the officer, immediately after the ſoap that has been put into the frames ſhall have been cut up for ſale; on the penalty of 100 l. 24 *G.* 3. *c.* 48. *ſeſſ.* 2. *ſ.* 14. Hard ſoap to be ſold in cakes, and the ſcraps returned.

And if any ſcraps or parings of hard ſoap ſhall be ſold or ſent out by any maker, or ſhall be found removing or removed by land or water; the ſame ſhall be forfeited, together with the caſks and package, which may be ſeized by any officer of exciſe. And the maker who ſhall ſend out or ſell the ſame, ſhall for every ſuch offence forfeit 100l. 28 *G.* 3. *c.* 37. *ſ.* 14.

Entry and payment of the duties.

The maker ſhall weekly make entry in writing at the next office of all the ſoap by him made within each week, ſetting forth the weight, and what quantity was made at each boiling in that week; on pain of 50l. Which entries ſhall be on the oath of the maker, or chief workman, according to the beſt of his knowledge and belief. The ſaid entry and oath, within the bills, to be at the chief office of exciſe; and elſewhere, with the collector and ſupervisor. 17 *G.* 3. *c.* 52. *ſ.* 3.

And within one week after entry, the maker ſhall pay and clear off the duties, on pain of double duty; and after ſuch default in payment, he ſhall not ſell or deliver out any ſoap, until he hath paid off his duty, on pain of double value. *ſ.* 4.

Provided that no maker ſhall be obliged to go or ſend further than the market town where the ſoap is made, or the next market town, to make ſuch entry or payment. *ſ.* 5.

Perſons having ſoap in their poſſeſſion which hath not been charged with the duty.

And if any perſon ſhall knowingly receive, buy, or have in his poſſeſſion any ſoap after the ſame ſhall have been removed from the place where it was made, and ought to have been charged with the duty, before the ſaid duty hath been charged, (except ſuch as hath been condemned as forfeited,) whether he claim any property or intereſt therein or not, ſhall forfeit the ſame, and treble the value thereof, to be eſtimated at the beſt price the like ſort ſhall then bear in *London*. 26 *G.* 3. *c.* 77. *ſ.* 10, 11.

Soap carried coaſtwiſe.

Cocquets granted for ſhipping ſoap, to be landed in any other part of the kingdom, ſhall expreſs the quality, quantity, and weight, the mark of the package, and by whom made and ſold, and where conſigned; and if ſhipped without ſuch cocquet, the ſame ſhall be forfeited and ſeized, together with the package. 23 *G.* 2. *c.* 21. *ſ.* 29.

In portation and exportation.

No ſoap ſhall be imported, otherwiſe than in ſome package, containing at leaſt 224 pounds of neat ſoap, and ſtowed openly in the hold; on pain of being ſeized and forfeited, together with the package, and the maſter of the veſſel to forfeit 50l. *ſ.* 27.

But on information brought againſt any ſuch maſter he may detain the wages of the mariners, till it be determined; and if it ſhall appear that the ſoap was put on board by any mariner without the maſter's knowledge, the maſter may apply the wages of ſuch mariner in payment of the forfeiture. 26 *G.* 2. *c.* 32. *ſ.* 8.

And the officers of exciſe (in like manner as the officers of the cuſtoms) may go on board any veſſel, and ſearch for and ſeize all ſoap forfeited, together with the package; and they may likewiſe ſeize ſuch as before entry and payment of duties ſhall be found unſhipping or unſhipped. 23 *G.* 2. *c.* 21. *ſ.* 28.

Soap that hath paid the duty may be exported; and the duties ſhall be drawn back. 10 *An. c.* 19. *ſ.* 22, 23, 24. 27 *G.* 3. *c.* 13. But no drawback ſhall be allowed on the exportation of any foreign ſoap imported. 23 *G.* 2. *c.* 21. *ſ.* 36.

The officers of exciſe or cuſtoms may ſeize any ſoap with the package, that ſhall be found in any veſſel, cart, or other carriage; where they ſhall have good reaſon to believe that the ſame was made in ſome private work-houſe, or clandeſtinely imported without payment of duty, or that the ſame has been exported and relanded after repayment of the duty; and if the party in whoſe poſſeſſion the ſame ſhall be found, ſhall not at the hearing of the information make it appear that the duty hath been paid or ſecured, he ſhall forfeit 5 l. for every 100 pounds weight; and alſo the goods and package ſhall be forfeited. *ſ.* 31.

And if any perſon ſhall knowingly harbour or conceal any ſoap unlawfully imported, or relanded after ſhipping for exportation upon debenture; he ſhall, whether he claims any property therein or not, forfeit 50 l. for every hundred weight, together with the goods and package. *ſ.* 32.

And where any ſuch ſoap ſhall be ſeized as forfeited, and no perſon ſhall claim the ſame in twenty days, if it is within the limits of the chief office of exciſe in *London*, the officer who made ſeizure may cauſe notice, ſigned by the ſolicitor of exciſe, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the ſame by the commiſſioners of exciſe; and if it is out of the ſaid limits, then public notice ſhall be given by proclamation at the next market town, on the market day next after the ſaid twenty days, of the day and place where the juſtices will proceed to trial and condemnation

thereof. And the judgment thereon shall not be liable to any appeal, or be removed by *certiorari*. *s.* 33.

Scales and weights.

And the maker shall keep just scales and weights where he makes his soap, and permit and assist the officer to use them; on pain of 10*l*. 10 *An. c.* 19. *s.* 13.

And by 10 *G.* 3. *c.* 44. If he shall use insufficient scales or weights, he shall forfeit 100*l*.; but not to be prosecuted both on this and the former act. And by 28 *G.* 3. *c.* 33. *s.* 15. the same shall be forfeited, and may be seized by any officer.

Power of the justices.

The excise laws shall be in force for managing these duties; and the penalties (except where it is otherwise herein directed (*a*)—) shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed, half to the king, and half to him that shall sue. 10 *An. c.* 19. *s.* 26. 11 *G. c.* 30. *s.* 39. 24 *G.* 2. *c.* 40. *s.* 29.

Proof to lie on the claimer.

And where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *s.* 35.

Appeal.

And if the party is not satisfied with any judgment of the justices on the act of 23 *G.* 2. *c.* 21. abovementioned, he may appeal to the next quarter sessions (except in the case before-mentioned, where no person shall claim the goods seized). *s.* 37.

Mitigation.

And on information on the said act of the 23 *G.* 2. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. *s.* 38.

Utensils liable.

And all soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 *An. c.* 19. *s.* 20. 28 *G.* 3. *c.* 37. *s.* 21.

5 G. 3. to extend to the makers of ball soap.

And whereas doubts have arisen whether the provisions of the aforesaid act 5 *G.* 3. *c.* 43. do extend to the makers of *ball soap*, it is declared, that the provisions of the said act do extend to the makers of ball soap. 28 *G.* 3. *c.* 37. *s.* 13.

(*a*) There is a particular method directed for levying the penalties imposed by 23 *G.* 2. *c.* 21.; but being the same as for *Candles* and *Starch*, it is unnecessary to repeat it here, being set forth at large, title **Excise.** (*Candles*).

XVI. Spirituous liquors.

So far as running of brandy and other ſpirituous liquors falleth in with the running of other uncuſtomed goods; ſee the firſt part of this title concerning the **Cuſtoms in general.**

And in order more clearly to explain the matters under this head, it is propoſed to arrange the ſame in the following manner:

i. *Matters relating to* Foreign Spirits *imported.*

ii. *Concerning Spirits made in* England, *and therein of* Diſtillers, Compounders, *and* Rectifiers.

iii. *Spirits made in* England *for exportation, or ſhipped as Stores, or carried Coaſtwiſe.*

iv. *Spirits made in* England *to be exported to* Scotland, *and in* Scotland *to be brought into* England.

v. *Matters relating to* Importers *and* Dealers *in Spirits by Wholeſale and Retail; and the recovering and Application of Penalties.*

i. Matters relating to Foreign Spirits *imported.*

	s.	*d.*	*s.*	*d.*	
By 27 *G.* 3. *c.* 13. *Sched.* (F), For every gallon of *ſingle brandy* imported, to be paid by the importer, before the landing thereof	4	3			Duty on importation.
And by 31 *G.* 3. *c.* 1. an additional duty of (*a*) - - - -	0	10			
And by 34 *G.* 3. *c.* 3. a further additional duty of - - -	0	10			
And by 35 *G.* 3. *c.* 12. ditto -	0	10			
And by 37 *G.* 3. *c.* 14. ditto -	0	10			
And by 39 *G.* 3. *c.* 23. ditto -	0	10			
			8	5	
For every gallon of *brandy above proof* imported - - -	8	1			
And by 31 *G.* 3. *c.* 1. an additional duty of - - -	1	8			
And by 34 *G.* 3. *c.* 3. a further ditto -	1	8			
And by 35 *G.* 3. *c.* 12. ditto -	1	8			

(*a*) The additional duties granted by the 31 *G.* 3. *c.* 1. were at firſt but temporary, but by 34 *G.* 3. *c.* 4. *ſ.* 1. the ſaid duties are made perpetual.

		s.	d.	s.	d.
And by 37 *G.* 3. *c.* 14.	ditto -	1	8		
And by 39 *G.* 3. *c.* 23.	ditto -	1	8		
				16	5
For every gallon of *rum*, *ſpirits*, or *aqua vitæ*, of the produce of the *Britiſh* colonies or plantations, imported - -		3	7		
And by 31 *G.* 3. *c.* 1. an additional duty of - - - -		0	8		
And by 34 *G* 3. *c.* 3. a further ditto -		0	8		
And by 35 *G.* 3. *c.* 12. ditto -		0	8		
And by 37 *G.* 3. *c.* 14. ditto -		0	8		
And by 39 *G.* 3. *c.* 23. ditto -		0	8		
				6	11
For every gallon thereof above proof -		6	8		
And by 31 *G.* 3. *c.* 1. an additional duty of - - -		1	4		
And by 34 *G.* 3. *c.* 3. a further ditto -		1	4		
And by 35 *G.* 3. *c.* 12. ditto -		1	4		
And by 37 *G.* 3. *c.* 14. ditto -		1	4		
And by 39 *G.* 3. *c.* 23. ditto -		1	4		
				13	4
For every gallon of *ſingle ſpirits* or *aqua vitæ* (other than ſuch brandy, rum, ſpirits, or aqua vitæ, as aforeſaid) - -		4	3		
And by 31 *G.* 3. *c.* 1. an additional duty of - - -		0	10		
And by 34 *G.* 3. *c.* 3. a further ditto -		0	10		
And by 35 *G* 3. *c.* 12. ditto -		0	10		
And by 37 *G.* 3. *c.* 14. ditto -		0	10		
And by 39 *G.* 3 *c.* 23. ditto -		0	10		
				8	5
For every gallon of *ſpirits* or *aqua vitæ*, (other than ſuch brandy, rum, ſpirits, or aqua vitæ, as aforeſaid,) above proof -		8	1		
And by 31 *G.* 3. *c.* 1. an additional duty of - - -		1	8		
And by 34 *G* 3. *c* 3. a further ditto -		1	8		
And by 35 *G* 3. *c.* 12. ditto -		1	8		
And by 37 *G.* 3. *c.* 14. ditto -		1	8		
And by 39 *G.* 3. *c.* 23. ditto -		1	8		
				16	5

There are alſo by the ſaid act of 27 *G.* 3. *c.* 13. other duties on the importation, and drawbacks allowed on the exportation of ſpirits, as particularly ſet forth in ſeveral tables annexed to the ſaid act.

To

To enable the gaugers the better to aſcertain the proof of all foreign imported liquors liable to the duties of exciſe; it ſhall be lawful for the gaugers or other officers of exciſe, at any time before the gauging, to take a ſample not exceeding half a pint, out of each caſk or other package containing foreign ſpirituous liquors imported, without paying any thing for the ſame. 32 *G.* 2. *c.* 29. Officers may take ſamples.

And any officer may take ſamples of foreign ſpirits, in the cuſtody of any diſtiller, rectifier, or dealer, not exceeding four gallons, paying for the ſame 13*s. per* gallon; and if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 100*l.* 26 *G.* 3 *c.* 73. *ſ.* 36.

And if any perſon ſhall land any *French* brandy, before the duty be paid or ſecured, or without licence from the proper officer ſo to do; he, and every perſon aiding therein, or concealing the ſame when landed, ſhall not only forfeit the ſame, but alſo double value: And if any officer of the cuſtoms or exciſe ſhall connive thereat; he ſhall be incapable to hold any office in the revenue, and forfeit 500*l.* 1 *An. ſt.* 2. *c.* 14. Landing French brandy without paying the duty.

Provided that, in order to have an opportunity to ſell the ſame on ſhip board, it ſhall be lawful for the importer or proprietor of any foreign ſpirituous liquors, to take, in the preſence of a gauger or other exciſe officer, a ſample, not exceeding half a pint, out of every caſk or other package, whilſt the ſame ſhall be on ſhip board, and before landing, without paying any duty for the ſame. 32 *G.* 2. *c.* 29. Selling on ſhip-board.

And the officers of exciſe may go on board any ſhip or veſſel, and ſearch in like manner as the officers of the cuſtoms may do, for any exciſable liquors, and ſeize all ſuch as ſhall be forfeited, and ſuch as ſhall be unſhipped before entry and payment of the duties, together with the caſks and other package. 11 *G. c.* 30. *ſ.* 1. Exciſe officers may go on board.

And if any officer of the exciſe have cauſe to ſuſpect, that any foreign ſpirits ſhall be fraudulently concealed in any place, entered or not entered, if it is within the bills of mortality, then on oath made before two commiſſioners, if elſewhere, before one juſtice, where he ſuſpects them to be concealed, ſetting forth the ground of his ſuſpicion; he or they may by ſpecial warrant authorize ſuch officer by day or night, but if in the night in preſence of a conſtable, to enter, ſeize, and carry away the ſame as forfeited, together with the caſks or veſſels: And if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 100*l.* *ſ.* 2. Warrant to ſearch.

Who only may seize.

And by a general clause in the 8 *G. c.* 18. All brandy, arrack, rum, spirits, and strong waters, *British* or foreign, and all foreign excisable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or persons deputed by warrant from the lord treasurerer, or under treasurer, or by special commission under the great or privy seal, and no other person. *s.* 24.

Obstructing the officer.

And if any person shall obstruct any officer of the customs or excise, in seizing or securing any of the said liquors, or endeavouring to rescue them after seizure, or shall after seizure stave, or otherwise damage any cask, or vessel; he shall forfeit 40 l. 8 *G. c.* 18. *s.* 25.

Notice to be given of seizure.

But no person shall be entitled to any reward given on such seizure, unless he give notice to the next officer of excise, or to the supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be afterwards removed without a permit from such officer of excise, on pain of being re-seized. 12 *G. c.* 28. *s.* 6.

In what ships to be imported.

If any foreign brandy, arrack, rum, strong waters, or spirits of any kind shall be imported, in any ship or vessel of 100 tons burden or under (except only for the use of the seamen, not exceeding two gallons each); such vessel with her tackle, and also the spirits, shall be forfeited. 5 *G.* 3. *c.* 43. *s.* 27. —— Except rum, or other spirits of the growth and manufacture of the *British* sugar plantations; which may be imported in any vessel of not less burden than 70 tons. 6 *G.* 3. *c.* 46. *s.* 9.

Importation from Ireland.

And to prevent clandestine landing of spirits from *Ireland*; if any brandy, rum, strong waters, or other spirits shall be entered or shipped for exportation from *Ireland*, to any place not within the same kingdom, in any vessel under the burden of 100 tons (except only for the use of the seamen, not exceeding two gallons each); the said vessel with the tackle and furniture, and also all such spirits, shall be forfeited. 5 *G.* 3. *c.* 43. *s.* 30.

Ships hovering near the coast.

And where any vessel of 50 tons or under being in part or fully laden with *brandy*, shall be at anchor, or within two leagues from the shore, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed sloop appointed for the guard of the coast, or the commander of any sloop or vessel in the service of the customs, may compel the master to come into port; and the same shall be liable in all

caſes as ſhips hovering within the limits of any port. 6 *G. c.* 21. *ſ.* 31.

And by the 9 *G.* 2. *c.* 35. Where *any* veſſel coming from foreign parts, and having on board any foreign brandy or ſpirits, in caſks under ſix gallons (except only for the uſe of the ſeamen, not exceeding two gallons each), ſhall be found at anchor, or hovering within two leagues of the ſhore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all ſuch ſpirits, with the caſks and other package, or the value thereof, ſhall be forfeited (whether bulk ſhall have been broken or not); and the ſame may be ſeized, or the value thereof ſued for by the officers. *ſ.* 22. And if ſuch veſſel do not exceed the burden of 50 tons, the ſaid veſſel alſo, together with her tackle and furniture, ſhall be forfeited. 3 *G.* 3. *c.* 22. *ſ.* 5.

Unſhipping into boats in order to be landed.

And if the maſter, purſer, or other perſon having charge of the veſſel, ſhall ſuffer any brandy (or other uncuſtomed goods) to be put out of the ſhip into any hoy, lighter. boat, or bottom, to be laid on land; he ſhall, beſides the other penalties, ſuffer ſix months impriſonment. 6 *G. c.* 21. *ſ.* 32.

In what caſks to be imported.

No brandy ſhall be imported in any veſſel not containing 60 gallons at leaſt; on pain of forfeiting the ſame, or the value. 4 *W. c.* 5. *ſ.* 8.

And no *geneva* or *rum* ſhall be imported in any veſſel or caſk, not containing 60 gallons at the leaſt (except only for the uſe of the ſeamen, not exceeding two gallons each); on pain of forfeiture. 5 *G.* 3. *c.* 43. *ſ.* 28.

Provided, that if it ſhall be made appear to the ſatisfaction of the commiſſioners of the cuſtoms, that any rum, being the produce of any of his majeſty's dominions in *America*, ſhall be imported from thence in ſmall caſks, without fraud or concealment, either for the uſe of the maſter in the voyage, or for the private uſe of merchants or traders importing the ſame, or deſigned as preſents, and not by way of merchandize; they may, if they think proper, admit ſuch rum to an entry, and cauſe the duties to be accepted inſtead of the forfeiture, *ſ.* 29.

Places of keeping to be entered.

Whereas the illegal importation of foreign ſpirits is greatly promoted by fictitious entries of ſtorehouſes and other places for keeping ſuch liquors, by evil-minded and indigent perſons; it is therefore enacted, that no ſeller of or dealer in foreign ſpirituous liquors, reſiding within the limits of the head office of exciſe in *London* (not being a retailer

retailer thereof duly licenſed) ſhall be permitted to make entry of any warehouſe, ſtorehouſe, room, ſhop, cellar, vault, or other place for keeping any foreign ſpirituous liquors; unleſs he ſhall inhabit in a tenement of 12l. a year or upwards, and for which he is aſſeſſed in his own name, and alſo pay to the pariſh rates; and in no other part of the kingdom, unleſs he be aſſeſſed and pay to church and poor; otherwiſe he ſhall be liable to forfeit as dealing therein without entry. 23 *G.* 3. *c.* 70. *ſ.* 1.

And where any entry ſhall be made, no other ſeller or dealer (not being a joint trader or partner with ſuch ſeller or dealer) however qualified, ſhall make entry of the ſame, or of any other warehouſe, room, or place, within the ſame houſe; on pain of being ſubject to the like penalties. *ſ.* 2.

Rum may be landed and warehouſed before duty paid.

All rum or ſpirits of the growth or manufacture of the *Britiſh* ſugar colonies (imported directly from thence) on entry made (within thirty days after report made by the maſter or purſer of the contents and loading of the ſhip, 31 *G.* 2. *c.* 36. *ſ.* 5, 6.) and before payment of the duty, may be landed and put into warehouſes, provided at the charge of the proprietor or importer, and approved of by the commiſſioners; the proprietor or importer firſt giving bond for payment of the duty, if it be ſold (within twelve calendar months; and if it be not ſold in that time, then to pay the duty at the end of twelve calendar months, 6 *G.* 3. *c.* 47. *ſ.* 4.), according to the gauge taken at the time of landing and lodging in the warehouſe. 15 *G.* 2. *c.* 25. *ſ.* 1.

And if any rum or ſpirits be landed, before entry at the cuſtom-houſe and with the collector of exciſe, and the duties ſecured, or without warrant for landing, or without the preſence of an exciſe officer; the ſame ſhall be forfeited, or the value thereof. *ſ.* 3.

And before it be landed and lodged in the warehouſe, a mark ſhall be ſet upon every caſk, mentioning the quantity, and the proprietor or importer; and the warehouſe keeper and exciſe officer ſhall each keep a book, and enter the particulars carried in or out, and when, and for whoſe uſe delivered; and every ſix months, or oftener if required, tranſmit an account thereof in writing, and on oath, to the commiſſioners of exciſe, who ſhall in one month examine the ſame: and if any rum or ſpirits ſhall be delivered contrary to this act, the warehouſe keeper or officer offending ſhall be diſabled from holding any public employment, and forfeit 100l. *ſ.* 4.

And

And the rum or ſpirits may be delivered out of the warehouſe, on payment of the exciſe, and on producing to the warehouſe keeper, and the exciſe officer attending the warehouſe, a certificate of ſuch payment; and the warehouſe keeper ſhall give a permit therewith, ſigned by the exciſe officer, to prevent the ſeizing thereof. *ſ.* 5. Delivering out of the warehouſe.

But no proprietor, importer, or buyer, ſhall receive out of the warehouſe leſs than one veſſel of 20 gallons, unleſs for the uſe of ſeamen in a voyage. *ſ.* 6.

And the proprietor or importer may fix a lock on the warehouſe and keep the key: and the exciſe officer may put on another, and keep the key; and the proprietor or importer may in preſence of the warehouſe keeper or exciſe officer, at all reaſonable times, view, and take out as aforeſaid. *ſ.* 7. Warehouſe to be locked.

And ſuch exciſe officer may by day or night (but if in the night in the preſence of a conſtable) upon one hour's previous notice having been given to ſuch importer or proprietor, or left at his dwelling houſe, or with his known agent or ſervant uſually intruſted with the keeping ſuch key, enter into every ſuch warehouſe, and by taſting, gauging, or otherwiſe, take an account of all rum or other liquors found therein, and take ſamples thereof not exceeding half a pint out of each caſk or veſſel, paying (if demanded) after the rate of 3s. a gallon. And if any ſuch importer or proprietor, or his agent or ſervant, ſhall, after ſuch notice, hinder or refuſe ſuch officer to enter any ſuch warehouſe, or to take ſuch account, or ſamples as aforeſaid, he ſhall forfeit 200l. 26 *G.* 3. *c.* 77. *ſ.* 15. Officers may enter and ſurvey and take ſamples.

And upon oath made by any perſon, that he hath reaſon to ſuſpect, or believe, that ſuch proprietor or importer of rum or other ſpirits lodged in any warehouſe as aforeſaid, doth mean and intend without the conſent and knowledge of the officer, in the night time, to go into ſuch warehouſe; or that ſuch proprietor or importer, or other perſon, ſhall at any time actually be in ſuch warehouſe, without the privity or conſent of ſuch officer: One commiſſioner of exciſe within the bills, or one juſtice elſewhere, may iſſue his warrant requiring any officer of exciſe, with the aſſiſtance of a conſtable, to enter ſuch warehouſe by force or otherwiſe; and ſuch proprietor or importer, or other perſon, who ſhall hinder or refuſe the ſaid officer or his aſſiſtant, from entering ſuch warehouſe, or executing ſuch warrant, ſhall forfeit 200l. *Id. ſ.* 16.

And if any officer ſhall diſcover and find in ſuch warehouſe any *increaſe* of rum or ſpirits (except ſuch as have been Officer finding an increaſe or decreaſe.

been imported and lodged in such warehouse according to law) over and above the quantity found at the last preceding survey; or any *decrease* (other than such as hath been delivered out according to law, or by leakage or unavoidable accident) below the quantity found at the last preceding survey; such increase or decrease shall be deemed and taken to have been made by means of the proprietor or importer having by some act, device, or contrivance, opened such warehouse, not in the presence of the proper warehouse keeper, or other officer of excise, whose business it was to attend with the key, and to open the same. And in every such case, such proprietor or importer shall forfeit 500l. *Id. s.* 17.

And if such proprietor or importer shall, by any device or contrivance, open the warehouse, except in the presence of the warehouse keeper or excise officer, he shall forfeit 500l. 17 *G.* 3. *c.* 52. *s.* 15.

Spirits remaining above 12 months.

And if any rum or spirits remain in the warehouse above 12 calendar months (6 *G.* 3. *c.* 47. *s.* 4.), without paying the duty, the commissioners of excise may sell them by auction, and pay themselves the duty and charges, rendering the overplus to the proprietor or importer. *s.* 9.

Permit for removal.

Where any such liquors shall be sold in any such entered place, the officer shall on request of the seller (without fee) give the buyer a certificate signed by him, expressing the quantity, the name of the buyer and seller, and that the duty hath been paid, or that it hath been condemned as forfeited. 6 *G.* *c.* 21. *s.* 16.

And no such liquor, exceeding one gallon, shall be carried without such certificate or permit; on pain of forfeiting the same with the casks and vessels. *s.* 17.

And if any person shall take out a permit, and not remove the liquors accordingly, nor return the permit; he shall forfeit treble value: And if there appears not a sufficient decrease in the stock, to answer the quantity in the permit, the officer may seize so much as will answer the quantity. But no person shall receive a permit, without direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50l. and in default of payment, three months imprisonment. 11 *G.* *c.* 30. *s.* 10.

No foreign spirits, although under one gallon, shall be received into the custody of any retailer, without a permit signifying that the duties were paid, or that they had been condemned; on pain of forfeiting the same and the vessel. 8 *G.* *c.* 18. *s.* 13.

And

And for the better preventing foreign ſpirituous liquors that have been illegally imported from being removed from the ſea coaſts into the ſtocks of entered dealers or others; no ſeller or dealer ſhall be allowed to take out more than one permit in one day to one perſon: Which permit ſhall be granted for the removal of no more than one caſk or other package of any foreign ſpirituous liquors, of one kind of ſpecies, directed to one and the ſame perſon. And if any ſhall be found removing or removed contrary hereto, with or without a permit, the ſame ſhall be forfeited. 23 *G.* 3. *c.* 70. *ſ.* 3.

Provided that ſeveral permits may be taken out and caſks ſent to the ſame perſon the ſame day; ſo as each caſk be ſent under different permits, and by different conveyances. *ſ.* 4.

Provided alſo, that nothing herein ſhall prevent dealers from ſending with one permit by one and the ſame conveyance, any number of caſks, containing 60 gallons each or upwards. *ſ.* 5.

And if any foreign ſpirits, not being in caſks of 60 gallons or upwards, ſhall be found removing, unleſs at the following times, that is, from *Sept.* 29 to *March* 25 yearly, between the hours of ſeven in the morning and five in the evening; and from *March* 25 to *Sept.* 29, between the hours of five in the morning and ſeven in the evening (except the ſame is carrying by a known common ſtage coach, waggon, or other ſtage carriage which uſually travels out of thoſe hours); the ſame ſhall be forfeited, whether accompanied with or without a permit. *ſ.* 6.

And no foreign ſpirits more than 60 gallons, ſhall be brought to *London* by one permit, or by one conveyance, at the ſame time, from any part of *England* by land or water (except by *Graveſend* in the ordinary courſe of commerce); on pain of being ſeized and forfeited. 26 *G.* 3. *c.* 73. *ſ.* 58.

And when any dealer ſhall ſend a requeſt note to a permit writer, he ſhall ſpecify therein the quality or kind of ſuch foreign ſpirituous liquors intended to be removed with each permit, the contents of the caſk or other package, and whether the ſame is to be removed by land or water, and by what mode of conveyance; otherwiſe ſuch requeſt note ſhall be void, and no permit ſhall be granted thereon. 23 *G.* 3. *c.* 70. *ſ.* 7.

If any perſon ſhall counterfeit ſuch permit, or give or receive any falſe permit, or alter any granted by the proper

per officer; he shall forfeit 500l. to be recovered in the courts at *Westminster*. *s.* 10.

ii. *Concerning Spirits made in* England, *and therein of* Distillers, Compounders, *and* Rectifiers.

By 27 *G.* 3. *c.* 13. *Sched.* (F), the following duties are imposed:

Duty on home spirits.

	s.	*d.*	*s.*	*d.*
For every gallon of fermented *wort* or *wash* which shall be brewed or made in *England* before 5th *July* 1788 (*a*), for extracting spirits for home consumption, from *malt*, *corn*, *grain*, or *tilts*, or any mixture with the same, to be paid by the maker or distiller - - -	0	6		
And by 31 *G.* 3. *c.* 1. (*b*) an additional duty of - - -	0	1		
And by 34 *G.* 3. *c.* 2. a further ditto	0	1		
And by 35 *G.* 3. *c.* 11. ditto -	0	1		
And by 37 *G.* 3. *c.* 14. ditto -	0	1		
And by 39 & 40 *G.* 3. *c.* 23. ditto -	0	1		
			0	11
For every gallon of *cyder* or *perry*, or any other wash or liquor which shall be made as aforesaid, from any kind of *British* materials (except such as before-mentioned), or any mixture therewith, for extracting spirits as aforesaid - -	0	5		
And by 31 *G.* 3. *c.* 1. an additional duty of - - -	0	1		
And by 34 *G.* 3. *c.* 2. a further ditto	0	1		
And by 35 *G.* 3. *c.* 11. ditto -	0	1		
And by 37 *G.* 3. *c.* 14. ditto -	0	1		
And by 39 & 40 *G.* 3. *c.* 23. ditto -	0	1		
			0	10
For every gallon of fermented *wort* or *wash* made from *melasses* or *sugar*, or any				

(*a*) The duties granted by 27 *G.* 3. *c.* 13. were at first but temporary, but have by several subsequent acts been continued, and by 35 *G.* 3. *c.* 89. *s.* 3. the same are made perpetual.

(*b*) The additional duties granted by 31 *G.* 3. *c.* 1. were but temporary, but by the 33 *G.* 3. *c.* 28. *s.* 24. they are made perpetual.

	s.	d.	s.	d.
mixture therewith, for extracting ſpirits as aforeſaid - - -	0	8¾		
And by 31 *G.* 3. *c.* 1. an additional duty of - - -	0	1½		
And by 34 *G.* 3. *c.* 2. a further additional duty of - - -	0	1½		
And by 35 *G.* 3. *c.* 11. ditto -	0	1½		
And by 37 *G.* 3. *c.* 14. ditto -	0	1½		
And by 39 & 40 *G.* 3. *c.* 23. ditto	0	1½		
			1	4¾
For every gallon of waſh made from *foreign refuſed wine* or *foreign cyder*, or waſh prepared from *foreign materials* (except melaſſes and ſugar), or any mixture therewith, for extracting ſpirits as aforeſaid - - -	1	0		
And by 31 *G.* 3. *c.* 1. an additional duty of - - -	0	2		
And by 34 *G.* 3. *c.* 2. a further ditto - - -	0	2		
And by 35 *G.* 3. *c.* 11. ditto -	0	2		
And by 37 *G.* 3. *c.* 14. ditto -	0	2		
And by 39 & 40 *G.* 3. *c.* 23. ditto -	0	2		
			1	10

[By ſeveral acts of parliament duties are impoſed upon, and regulations made reſpecting the manufacture of a ſort of ſpirits called *Maidſtone geneva*, made by *George Biſhop* of *Maidſtone*, and which is extended to Sir *W. Biſhop* and Co., which being local only, it is thought unneceſſary to inſert here.]

Diſtillers and rectifiers to be licenſed.

And every *diſtiller* or maker of *low wines* or *ſpirits* for ſale, or exportation, and every *rectifier* of ſpirits, ſhall take out a licence, which ſhall be charged with a yearly ſum equal to the amount of one halfpenny a gallon of the contents of every ſtill of each deſcription, which ſhall have been in the poſſeſſion of every ſuch diſtiller or rectifier within the year, ending the 5th day of *July* in each year, previous to his taking out the licence; and ſhall renew ſuch licence annually ten days before the end of the year, on pain of forfeiting, if a corn diſtiller, 200 l.; if a melaſs diſtiller or rectifier, 30 l. 24 *G.* 3. *c.* 41. *ſeſſ.* 2. *ſ.* 1. 7.

Who ſhall be deemed rectifiers, or compounders.

And no perſon ſhall be deemed a *rectifier* or *compounder*, who ſhall not have an entered ſtill capable of containing excluſive of the head 120 gallons; nor unleſs ſuch ſtill ſhall have ſuitable tubs and worms affixed thereto, and

ſhall be *bona fide* uſed for rectifying *Britiſh* ſpirits for ſale. 26 *G.* 3. *c.* 73. *ſ.* 15.

Certain words to be put up.

And by the 19 *G.* 3. *c.* 50. Every ſuch diſtiller ſhall cauſe to be painted, in durable large characters, over the outward door of every houſe or other place uſed by him for making or keeping *Britiſh* made ſpirits, the words *Diſtiller*, *Rectifier*, or *Compounder of ſpirituous liquors* (as the caſe may be); on pain of 100l. *ſ.* 6.—And if any perſon ſhall put up ſuch words without having duly made entry of all the places by him uſed for making or keeping ſuch ſpirits, he ſhall forfeit 200 l. *ſ.* 9.

Buying Britiſh ſpirits.

And if any diſtiller or dealer ſhall buy any *Britiſh* made ſpirits (except at the public ſales of condemned ſpirits by the commiſſioners of exciſe) of any perſon not having the ſaid words painted over his door; he ſhall forfeit 50l. *ſ.* 7.—And in this caſe, either the buyer or ſeller, informing againſt the other, he ſhall be diſcharged of his own penalty. *ſ.* 8.

And by 21 *G.* 3. *c.* 55. If any diſtiller or dealer ſhall buy any *Britiſh* made ſpirits (except as above excepted), he ſhall forfeit 500 l. But not to be proſecuted both by this and by any former act; and the ſeller informing againſt the buyer ſhall be diſcharged of his own penalty. *ſ.* 37, 8, 9.

Entry of houſes and veſſels for diſtillation.

By the 19 *G.* 3. *c.* 50. No perſon ſhall be permitted to make entry of any workhouſe or place, or of any ſtill or utenſil for making, diſtilling, or keeping of low wines or ſpirits, unleſs he ſhall occupy a tenement of 10 l. a year, and be aſſeſſed for the ſame in his own name, and alſo pay to the pariſh rates. And no entry ſhall be of any avail to any perſon not ſo qualified, nor for any longer time than he ſhall be ſo qualified. *ſ.* 3.

And by the 21 *G.* 3. *c.* 55. In order to prevent private diſtillations, every perſon, who ſhall make or diſtil any low wines or ſpirits, whether for ſale or not for ſale, ſhall be deemed a common diſtiller for ſale, and ſhall enter his ſtill and veſſels at the next office of exciſe; and every perſon, making or keeping any waſh fit for diſtillation, and having in his cuſtody any ſtill, ſhall alſo be deemed a common diſtiller for ſale, and liable to the ſeveral duties, and ſubject to the ſurvey of the officers. *ſ.* 34, 35.

And every perſon occupying any houſe, whether he be the owner or renter thereof or not, who ſhall knowingly permit any private back or ſtill to be ſet up or uſed in any part of ſuch houſe, or any building adjoining, without entry having been made thereof, and being duly licenſed, ſhall

ſhall be ſubject to the like penalties as perſons *uſing* ſuch ſtills. 26 *G.* 3. *c.* 73. *ſ.* 53.

And no common diſtiller or maker of low wines, ſpirits, or ſtrong waters, for ſale, ſhall ſet up any tun, caſk, waſhbatch, copper, ſtill, or other veſſel, for making or keeping any worts, waſh, low wines, ſpirits, or ſtrong waters, nor alter nor enlarge the ſame, nor have any of them private or concealed, or any private warehouſe, ſtorehouſe, cellar, or other place for making or keeping any the ſaid liquors, without firſt giving notice at the next office of exciſe; on pain of 20 l. and he in whoſe occupation any of the ſame ſhall be, ſhall forfeit 50l. 8 & 9 *W.* *c.* 19. *ſ.* 10.

And by the 24 *G.* 2. *c.* 40. Every diſtiller ſhall, ten days before he diſtils or makes any ſpirituous liquors, make entry at the next office of exciſe, of every ſtill or other veſſel which he ſhall make uſe of for brewing, diſtilling, working, making, laying, or keeping any worts, waſh, low wines, ſpirits, or ſtrong waters; and alſo of the veſſels uſed for brewing or keeping the after runnings or feints from the ſecond extraction (which laſt mentioned veſſels ſhall not at any one time exceed two in number); and alſo of all ſuch new utenſils as he ſhall make uſe of for the purpoſes aforeſaid; on pain of 50 l. for every ſuch ſtill or other veſſel uſed and not entered. *ſ.* 18.

And every diſtiller ſhall, four days before he begins to brew any grain, or mix any materials for making of waſh to be diſtilled into low wines, make entry (according to a ſchedule annexed to the act) at the next exciſe office, of all coppers, &c. or other veſſels which he ſhall make uſe of for the brewing, mixing, fermenting, working, diſtilling, holding, laying, or keeping, any wort, waſh, or low wines, or any ſpirits or feints; and ſhall in ſuch entry inſert the day when he intends to begin, and the uſe and purpoſe to which ſuch copper, &c. is intended to be applied; and the ſame ſhall not be uſed or applied to any other purpoſe than is ſpecified in ſuch entry; on pain of forfeiting 100l. together with all ſuch wort or other liquor found in any ſuch copper, &c. which may be ſeized by any officer of exciſe. 26 *G.* 3. *c.* 73. *ſ.* 3. 65.

And by the 21 *G.* 3. *c.* 55. No perſon ſhall make uſe of any veſſel, room, or place, for making waſh for the diſtillation of low wines and ſpirits, without giving notice at the next exciſe office; on pain of 50l. for every veſſel, room or other place ſo made uſe of without notice. *ſ.* 36.

Withdrawing or changing the entry.

And no distiller shall be allowed to withdraw his entry, whilst any duty is depending, or any utensils for brewing, fermenting, or distilling, shall be standing.—But nothing herein shall extend to prevent the changing of any entry, from the name of one owner, to a subsequent owner; or from an entry, for making spirits for home consumption, to spirits for exportation, or from making of spirits from one sort of materials to another sort; so that every such new entry be made on the same day on which such former entry was withdrawn, otherwise such former entry shall continue in force. 23 *G.* 3. *c.* 70. *s.* 25, 26. 26 *G.* 3. *c.* 73. *s.* 4.

Size of the Stills.

By the 2 *G.* 3. *c.* 5. No person who shall make or rectify any spirits for sale, or who shall sell or deal in any sort of spirituous liquors, shall have any still or number of stills, unless such still if a single one, or such stills taken together if more than one, shall contain at the least 100 gallons; on pain to forfeit for every such still 100 l. And such stills as shall contain separately less than 100 gallons, shall be all placed in one room or workhouse; on pain to forfeit, for every such still not so placed, 100 l. *s.* 4.

And by the 14 *G.* 3. *c.* 23. Every still for distilling any sort of fermented worts or wash, commonly called the wash still shall contain at least 400 gallons in the body of the still, exclusive of the head; and every still for distilling low wines, commonly called the low wine still, shall contain in the body thereof, exclusive of the head, at least 100 gallons; on pain of forfeiting, for every still containing respectively a less number of gallons, 100 l. *s.* 2.

By the 19 *G.* 3. *c.* 50. Whereas the duties on low wines and spirits are greatly diminished, by means of small stills privately made use of, it is therefore enacted, that every person keeping any wash fit for distillation and having in his possession any still, the cubic contents of which, when the head is on, will amount to two gallons, proof thereof being made, by the oath of one witness, before one commissioner of excise or justice, shall be deemed a common distiller for sale, and liable to the survey and duties. *s.* 1.

The same to be marked.

And the distiller shall shew to the officer every still or other vessel entered, and the officer shall mark the same with a particular and durable mark; and every vessel used by such distiller, without being so shewn or marked, shall be deemed a vessel or utensil of which no entry has been made; and if any person shall rub out or deface such mark, he shall forfeit 20 l. 24 *G.* 2. *c.* 40. *s.* 18.

And

And every *waſh-back* ſhall have a hole or dipping place in the top thereof, and ſhall be ſo conſtructed that the officer may conveniently take the gauge at ſuch hole; and ſhall be ſo placed that the top thereof ſhall be beneath the level of the charging cock of the waſh ſtill; on pain of 200 l. 26 *G.* 3. *c.* 73. *ſ.* 5. Waſh-backs, how to be conſtructed.

And before any ſuch waſh-back ſhall be freſh limed, ſuch diſtiller ſhall give, if within the bills four hours, elſewhere eight hours, notice in writing to the officer of exciſe, before he ſhall begin to lime the ſame; and if he ſhall not begin within one hour after the time mentioned in ſuch notice, the ſame ſhall be void, and he ſhall give a freſh notice; on pain of 50 l. *Id. ſ.* 6. When freſh limed.

By the 10 & 11 *W. c.* 4. *ſ.* 7. If any officer of exciſe ſhall have cauſe to ſuſpect any private ſtill, back, or other veſſel, ſpirits, low wines, waſh or other materials prepared for diſtillation, to be ſet up or kept in any place, and ſhall make affidavit before a juſtice of the peace, and therein declare the grounds of his ſuſpicion; he may in the day time, and in preſence of a conſtable, by warrant from ſuch juſtice to be directed to ſuch officer of exciſe, break open the door or any part of ſuch ſuſpected houſe or place, and enter and ſeize the ſame, and detain them there; and if they ſhall not in 20 days be claimed by the owner, they ſhall be forfeited, and ſold at the next general day of ſale; and if they be claimed in 20 days, the perſon claiming ſhall forfeit for every warehouſe or other place, in which any ſuch ſtill, back, or other veſſel ſhall be found, and alſo for every ſuch ſtill, back, and other veſſel found therein, 200 l. And by the 10 & 11 *W. c.* 21. he ſhall incur this forfeiture, whether he ſhall make any ſuch claim or not. *ſ.* 23. Private ſtills.

And by the 19 *G.* 3. *c.* 50. If any officer of exciſe ſhall at any time diſcover any private or concealed ſtill, back, or other veſſel, for the making or keeping of waſh, low wines, or ſpirits, or other materials preparing for diſtillation, he may (that is, without applying to a juſtice) ſeize ſuch ſtill, back, or veſſel, and all ſuch ſpirits, and either detain them in the houſe where found, or remove them to the next office of exciſe: And if they ſhall not within ten days be claimed by the owner, the ſame ſhall be forfeited; and the proprietor of any ſuch private or concealed back, ſtill, or other veſſel, or the perſon in whoſe cuſtody the ſame ſhall be found, ſhall forfeit for every place wherein ſuch private ſtill, back, and other veſſel ſhall be found, and alſo for every ſuch ſtill, back,

and other veſſel found therein, the ſum of 200l. And if any perſon ſhall obſtruct the officer, he ſhall forfeit 100l. *ſ.* 2.

And by the 23 *G.* 3. *c.* 70. Whereas notwithſtanding the many laws to prevent the private diſtillation of low wines and ſpirits, evil-minded perſons do privately make ſpirits; if any officer of exciſe ſhall know, or have cauſe to ſuſpect, that any private or concealed ſtill, back, veſſel, low wines, waſh, or other materials preparing for diſtillation, are ſet up or kept in any houſe or place within the limits of the head office in *London*, and ſhall make oath thereof before a juſtice or two of the commiſſioners, and elſewhere before a juſtice of the place, ſetting forth the ground of his ſuſpicion, they may by their warrant impower ſuch officer, by day or night, but if in the night, in preſence of a conſtable, to break open the doors or any part of ſuch houſe and ſeize the ſame, who may detain them there, or remove them to the next exciſe office; and if not claimed in ten days, the ſame ſhall be forfeited, and the proprietor, or perſon in whoſe cuſtody they ſhall be found, ſhall forfeit 200 l. and any perſon obſtructing ſuch officer in the ſearch, ſhall in like manner forfeit 200 l. And any perſon aſſiſting in ſuch private diſtillation ſhall forfeit 30 l. *ſ.* 13, 14.

But if on breaking open any ſuch door or houſe, no ſuch private back, ſtill, or other veſſel, ſpirits, low wines, waſh, or other materials for diſtillation, ſhall be found, the officer ſhall make good the houſe or place ſo broken up, or make ſatisfaction to the owner, to be adjudged by the two next juſtices (1 *Q.*); or the party injured may bring his action for the damages; and the ſame ſhall be paid by the commiſſioners out of the revenue of exciſe; and if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 200 l. 10 & 11 *W.* *c.* 4. *ſ.* 8.

Removing ſpirits privately diſtilled.

And for the more effectually preventing the removal of ſpirits that have been privately diſtilled, from the places where made to the houſes of rectifiers and compounders; the officers may ſeize all horſes, carriages, and boats employed in removing the ſame from one part of the kingdom to another, unleſs they be accompanied with regular permits. 23 *G.* 3. *c.* 70. *ſ.* 15.

Private cocks and pipes.

No diſtiller ſhall have any private pipe or ſtop cock, or other conveyance, by which any waſh or other liquors fit for diſtillation may be conveyed from one back or veſſel to another, or from any ſuch back or veſſel to his ſtill, or into any other place, nor ſhall have any hole in any back

or

or waſhbatch, by which any waſh or other liquor fit for diſtillation may be conveyed into or out of the ſame; on pain of 100l. 10 & 11 *W.* *c.* 4. *ſ.* 3.

And the exciſe officer in the day time, and in preſence of a conſtable, on requeſt made and cauſe declared, may break up the ground in any diſtilling houſe, or the ground near adjoining, or any wall, partition, or other place, to ſearch; and on finding ſuch pipe or other conveyance, may break up the ground, houſe, wall, partition, or other place, through or into which any ſuch pipe or other conveyance ſhall lead, and may break or cut any ſuch pipe or other conveyance, and may turn any cock to try whether ſuch pipe may convey any waſh or other liquor. *ſ.* 4.

And if no ſuch pipe or private conveyance be found, the officer ſhall make good the ground, wall, houſe, or other place, or make reaſonable ſatisfaction to the owner, to be adjudged by the two next juſtices (1 Q); or the party injured may bring his action for damages; the ſame to be paid by the commiſſioners out of the revenue of exciſe: and if any perſon obſtruct ſuch officer, he ſhall forfeit 100l. *ſ.* 5.

But any diſtiller may uſe any pipe, ſtop cock, or other conveyance above ground, in open view from one end to the other for letting his waſh out of the coolers into his backs or waſhbatches, and for conveying the waſh or worts out of the back or waſhbatch into the ſtill. *ſ.* 6.

And no diſtiller ſhall have any fixed pipe or other conveyance leading to or from any ſtill, except one charging pipe to each ſtill; nor any conveyance leading from ſuch ſtill except the diſcharge cock to each ſtill belonging, on pain of 200l. 23 *G.* 3. *c.* 70. *ſ.* 23.

And no diſtiller ſhall have any pipes of communication with the worm belonging to any ſtill, on pain of 100l. 26 *G.* 3. *c.* 73. *ſ.* 13.

And no diſtiller ſhall have any pipe or conveyance, leading to his waſh ſtill, except the known charging pipe leading from his waſh back, and the ſame ſhall empty itſelf in a ſhute, open trunk, or veſſel which ſhall not be more than ſix feet diſtance from the ſtill, and ſhall be at leaſt two feet long and one broad, and not more than two feet deep, from which ſhute, &c. the conveyance pipe into the waſh ſtill ſhall be ſtreight, and not concealed from the view of the officer, nor of a larger ſize than ſix inches diameter in the clear; on pain of 200l. *Id.* *ſ.* 17.

Holes or openings to be in the breast of the still.

Every distiller, rectifier, and compounder shall make (with the approbation of the surveyor or supervisor) a hole or opening in the breast of every still, that the officers may take gauges and samples; which hole or opening in the wash still shall not be more than five inches square, and so contrived, that the officers may take gauges thereof with a cork and rule; and in every other still, not being a wash still, the hole or opening shall not be less than one inch and an half in diameter, and so contrived that the officers may take samples from the still with a phial, to be drawn perpendicularly through the same. And if he shall presume to distil, rectify, or compound any spirits, before such holes or openings be made, he shall forfeit 50 l. 14 *G.* 3. *c.* 73. *s.* 3. 5.

Trunks and other close vessels to be demolished.

For the preventing of frauds being carried on by means of trunks and other close vessels set up by distillers for receiving wash and other materials fit for distillation from the wash backs and other utensils, before the same is pumped up into their stills; every distiller, whether for sale or exportation, having any such trunk or other close vessel, shall demolish or convert the same into open vessels; and if he shall hereafter erect any such, he shall forfeit 100 l. 23 *G.* 3. *c.* 70. *s.* 16.

Pipes at the end of still worms to be demolished.

And to the end that the officers may be able to taste and examine the quality of the low wines and spirits coming from the still; every distiller shall cut off or take away all pipes fixed to the end of the worms belonging to their stills; and if he shall fix any there for the future, he shall forfeit 100 l. 23 *G.* 3. *c.* 70. *s.* 16.

Locks on the still heads.

Every distiller, rectifier, and compounder, shall at his own expence provide and affix sufficient fastenings (to be approved of in writing under the hand of the gauger or supervisor) to the head of every low wine still, wash still, wash pumps and charging cocks, through which worts or wash are conveyed into such still: which said still heads, charging cocks, and wash pumps, shall from time to time be securely locked and sealed by the gauger; and the locks and keys for securing the said still heads, charging cocks, and wash pumps, shall be provided by the gauger or supervisor, at the expence of the distiller. And if the distiller shall presume to distil, before he hath affixed such fastenings, he shall forfeit 50 l. 12 *G.* 3. *c.* 46. *s.* 11. 17. 14 *G.* 3. *c.* 73. *s.* 1.

Locks on the holes or openings.

And the holes or openings in the breast of the still shall in like manner be locked and secured, under the same rules,

rules, regulations, and penalties as for ſecuring the ſtill heads. 14 *G.* 3. *c.* 73. *ſ.* 3. 5.

Locks on the charging and diſcharging cocks.

Every diſtiller ſhall, at his own expence, provide and affix ſufficient locks, keys, and faſtenings (to be approved of in writing under the hand of the ſurveyor or ſupervisor, to the diſcharge cock of every ſtill, and the officer ſhall lock and ſecure ſuch diſcharge cock; and every diſtiller ſhall, when required by the general ſurveyor, if in *London*, elſewhere by the ſurveyor or ſupervisor of the diviſion, immediately repair and alter according to ſuch requiſition all ſuch locks and faſtenings; and in default thereof, ſhall for every neglect or refuſal forfeit 50 l. 14 *G.* 3. *c.* 73. *ſ.* 5. 26 *G.* 3. *c.* 73. *ſ.* 9, 10.

And the diſcharge cocks ſhall be fixed in the body of each ſtill, ſo as the officers may have convenient acceſs to them; and for that purpoſe every ſuch diſcharge cock ſhall be continued in a ſtreight line from the body of the ſtill, and not project more than three feet from the body of the ſtill, nor 18 inches from the brick work or other materials whereon the ſtill ſhall be placed; on pain that every diſtiller offending in the premiſes ſhall forfeit 100 l. 23 *G.* 3. *c.* 70. *ſ.* 17.

And the keys of every charging and diſcharging cock ſhall be made in manner following; that is, the key ſhall be made with an open eye or hole in the top part thereof, which eye ſhall be of ſuch a ſize as to be capable of receiving a leaver ſufficient to turn the cock; and ſuch charging cocks and diſcharging cocks ſhall not have any hole or place of diſcharge, but at the mouth only; and no grate, ſtrainer, or other thing ſhall be placed before the mouth of any ſuch charge or diſcharge cock; on pain that every diſtiller offending herein ſhall forfeit 100 l. *ſ.* 18. 26 *G.* 3. *c.* 73. *ſ.* 11.

And no diſtiller ſhall rivet any key into any charge or diſcharge cock, ſo as to prevent the officer from taking out and examining ſuch key, on the penalty of 50 l. 26 *G.* 3. *c.* 73. *ſ.* 12.

And no diſtiller ſhall have any cap or covering upon a cock belonging to any ſtill pipe, back, or other veſſel, ſo as to prevent the officer from ſeeing and examining ſuch cock, on pain of 50 l. *Id. ſ.* 14.

Locks on the furnace door.

Every diſtiller, rectifier, and compounder ſhall, on the like pain, at his own expence, provide and affix ſufficient locks, keys, and faſtenings (to be approved of in like manner) to the furnace door of each ſtill; and the officers ſhall be permitted to lock and ſecure the ſaid furnace

nace doors, at any time when the ſtills are not at work. 14 *G.* 3. *c.* 73. *ſ.* 4, 5.

Penalty of opening or damaging ſuch locks.

If any perſon ſhall, by any means or device, open any faſtening on the holes or openings in the breaſt of the ſtill, or any diſcharge cock, or furnace door, after the ſame ſhall have been locked or ſecured by the officer; or ſhall wilfully hurt or damage any lock or other faſtening; he ſhall forfeit 200 l. *ſ.* 12.

Ladders to be provided.

The diſtiller ſhall provide proper ladders, whereby the officers may get to the top of each ſtill, and ſhall by himſelf or ſome perſon on his behalf, aſſiſt ſuch officer in ſetting up the ladder and examining the contents of each ſtill, and taking ſtill gauges thereof; on pain of 200 l. 23 *G.* 3. *c.* 70. *ſ.* 21.

Notice of taking in materials.

The diſtiller, within the bills, ſhall 24 hours at leaſt, and elſewhere 48 hours, before he receive any quantity of wine, cyder, ſugar, water, or any kind of fermented waſh, into his cuſtody, give notice to the officer of exciſe, of the quantity and ſpecies, and when he intends to receive the ſame; on pain of 50 l. 24 *G.* 2. *c.* 40. *ſ.* 20.

And by the yearly malt acts, every diſtiller who ſhall receive any quantity of cyder or perry into his cuſtody, ſhall give notice in writing to the officer under whoſe ſurvey he ſhall reſide, 48 hours before he ſhall begin to put any of the ſame into the ſtill, to be drawn into low wines or ſpirits; and if he ſhall not give ſuch notice, or ſhall diſpoſe of any quantity thereof otherwiſe than by diſtillation, he ſhall forfeit 5 l.

Notice of beginning to work.

When any diſtiller or maker of low wines and ſpirits from *corn or grain*, whoſe ſtill houſe is under the ſurvey of the *London* officers, or is ſituate in *London* or *Weſtminſter*, or within any other city, ſhall be deſirous of opening his ſtill, or of charging his waſh ſtill; he ſhall give to the officer notice in writing at leaſt four hours before he intends to charge his ſtill: But if he intends to open or charge it any time between twelve in the night and ſix in the morning, he ſhall give notice at leaſt twelve hours before he intends ſo to open his low wine ſtill or waſh ſtill. And where the ſaid ſtill houſe is not ſituate in *London* or *Weſtminſter*, nor under the ſurvey of the *London* officers, nor in ſome other city, he ſhall give at leaſt twelve hours notice in writing at the next office of exciſe or to the officer of the diſtrict, of ſuch his intention of opening or charging his ſtill. And if he ſhall not begin to charge his ſtill at the hour mentioned in ſuch notice, or within two hours after, the notice ſhall be void; and he ſhall be obliged to give a freſh

freſh notice, before the officer ſhall be bound to open the head of ſuch ſtill, or the ſaid charge cocks, or waſh pumps, ſo locked as aforeſaid. 12 *G.* 3. *c.* 46. *ſ.* 12, 13.

And the like notice ſhall be given, when ſuch *corn* diſtiller ſhall be deſirous to have the furnace door of his ſtill unlocked. 14 *G.* 3. *c.* 73. *ſ.* 6.

And when any diſtiller or maker of low wines or ſpirits from *melaſſes or other materials, not being corn or grain*, or any rectifier or compounder of ſpirits, ſhall be deſirous to charge his waſh ſtill, he ſhall, within the bills, give to the officer notice in writing four hours at leaſt, and elſewhere eight hours, of the particular hour or time of the day when he intends to charge ſuch ſtill: And when he is deſirous to have the furnace of his ſtill opened, he ſhall, if within the bills, give 12 hours notice, and elſewhere 24 hours, of the particular hour or time of the day or night when he intends to have the ſame opened; which notices for charging the waſh ſtills of ſuch diſtillers of molaſſes or other materials not being corn or grain, and alſo for opening the furnace doors, ſhall be given at the times following; *viz.* from *Sept.* 29, to *Mar.* 25, yearly, between the hours of ſeven in the morning and five in the evening: and from *Mar.* 25, to *Sept.* 29, between the hours of five in the morning and five in the evening—And if ſuch diſtiller ſhall not begin to charge his waſh ſtill at the time mentioned in ſuch notice, or within one hour after, the notice ſhall be void, and he ſhall be obliged to give another like notice, before the officer ſhall be obliged to attend. *ſ.* 6.

And every diſtiller, in the notice of his intention to charge his waſh ſtill, ſhall expreſs the particular waſh-batch or waſhbatches from which he intends to charge his ſtill, deſcribing the number and marks thereof; otherwiſe the notice ſhall be void. And if he ſhall charge his waſh ſtill from any waſhbatch not mentioned in ſuch notice; or ſhall take out of any ſtill any feints or ſpent waſh contrary to the directions of this act; he ſhall forfeit 100 l. *ſ.* 7, 8.

Officers may take ſamples of waſh.

And for the further preventing frauds, the officer ſhall be permitted to take ſamples of the waſh in any waſh back or other veſſel, not exceeding 12 gallons in the whole out of each ſuch waſh back or veſſel; paying for the ſame at the rate of 1 s. 6d. a gallon: and if the diſtiller ſhall obſtruct or hinder him, he ſhall forfeit 100 l. 23 *G.* 3. *c.* 70. *ſ.* 22.

If

Diſtiller making uſe of improper materials.

If any corn diſtiller, or maker of low wines or ſpirits from corn or grain, ſhall make uſe of any melaſſes, coarſe ſugar, honey, or any compoſition or extract of ſugar, in the brewing or preparing his waſh for diſtillation; or ſhall receive any of the ſaid materials into his cuſtody exceeding 10 lb. weight; he ſhall forfeit 100 l. And if any ſervant or other perſon ſhall aſſiſt therein, he ſhall forfeit 20 l. and in default of payment ſhall ſuffer three months impriſonment. *ſ.* 24.

And if any diſtiller, in preparing his griſt for waſh, in order for diſtillation, ſhall uſe more wheat than in the proportion of one quarter of wheat to two quarters of any other grain; he ſhall forfeit 50 l. 33 *G.* 2. *c.* 9. *ſ.* 23.

Officer to attend and ſurvey.

And the officer ſhall from time to time attend, according to the notice given. 12 *G.* 3. *c.* 46. *ſ.* 14.

Provided, that where notices are given by more than one diſtiller, rectifier, or compounder, each of them expreſſing the ſame hour or time for the officer to attend, it ſhall be ſufficient if he attend at the workhouſe of any one of them, according to the notice, or within one hour after. 14 *G.* 3. *c.* 73. *ſ.* 11.

And as ſoon as the officer ſhall be at the ſtill houſe, the diſtiller ſhall turn the diſcharge cock of every waſh ſtill, that the officer may be ſatisfied that ſuch waſh ſtill is really empty; and then, and not before, the officer ſhall open the ſtills, cocks, and pumps ſo locked and ſecured, and ſhall continue in the ſtill houſe all the time that ſuch waſh ſtill ſhall be charging; and when the ſame ſhall be fully charged, ſhall immediately lock and ſecure as before, all the ſtill heads, waſh pumps, and charging cocks, and ſhall leave them ſo locked and ſecured at all times. 12 *G.* 3. *c.* 46. *ſ.* 14.

And ſo often as it ſhall be found neceſſary to have ſuch ſtill heads, or charge cocks, or waſh pumps open, for repairing or mending the ſame, the officer ſhall attend all the time the workmen ſhall be employed in ſuch repairing; and ſhall lock the ſame every night; and ſhall attend at ſix o'clock each morning, whilſt the repairs are doing, to open the ſaid ſtills, charge cocks, and pumps. *ſ.* 15.

And no ſuch diſtiller ſhall have any pipe or conveyance to the low wine ſtills, from any other veſſel or utenſil, except the known and entered low wine caſk; on pain of 100 l. *ſ.* 16.

And if any perſon ſhall open any ſtill head, charge cock, or waſh pump, after the ſame ſhall have been locked and ſecured as aforeſaid, before the ſame ſhall have been opened by the officer of exciſe; or ſhall wilfully hurt or damage any ſuch lock or other faſtening; he ſhall forfeit 200 l. *ſ.* 18.

And by the 14 *G.* 3. *c.* 73. Whenever the diſtiller ſhall be deſirous to light a fire under the ſtill, and to have the furnace door opened, the officer ſhall attend according to the notice given, and open the ſame. *ſ.* 4.

And he ſhall be permitted to take ſtill gauges, as well of ſpent waſh and feints, as of the charge of the waſh ſtill, at any time after the ſtill is charged, and before it comes to work; and alſo to take ſamples of the ſame at any time after the ſtill is charged and before it comes to work, and alſo after the ſtill is off, paying, if demanded, after the rate of 1 s. 6 d. a gallon for the waſh, and 4 d. a gallon for ſpent waſh and feints. And if, in taking ſuch gauge or ſample, he ſhall diſcover that any waſh hath been put into any ſtill except the known waſh ſtill, or into the waſh ſtill without ſuch notice as aforeſaid; or ſhall find any increaſe in ſuch ſtill, more than can be accounted for by the compare with the decreaſe from the waſhbatch expreſſed in the notice; or if, on comparing the quantity of low wines charged, with the ſpent waſh remaining in the waſh ſtill, he ſhall find a greater proportion than could ariſe from the quantity of waſh taken account of in the waſhbatches pumped into the waſh ſtill; ſuch increaſe ſhall be deemed to be made from ſome waſhbatch not mentioned in the notice, and the officer ſhall charge the diſtiller with double duty from the preſumptive charge; and no allowance ſhall be made to him for any feints, water or other liquor, on any pretence put into the waſh ſtill, but ſuch as ſhall have been put therein in the view of the officer. *ſ.* 9.

And if the officer ſhall diſcover at the ſtill houſe, in any ſtill other than the known waſh ſtill, any waſh put into or mixed with the low wines or ſpirits in ſuch ſtill; every diſtiller, rectifier, or compounder offending herein, ſhall forfeit 100 l. *ſ.* 10.

And if any perſon ſhall obſtruct any officer in the execution of this act, he ſhall forfeit 100 l. *ſ.* 13.

And by the 23 *G.* 3. *c.* 70. Whenever the officer ſhall have received notice for opening the furnace door of any ſtill belonging to any rectifier or compounder, and ſhall attend for that purpoſe, ſuch officer ſhall not on any pretence

tence open the furnace door of any ſuch ſtill, but of ſuch as are at that time fully charged, nor until he hath examined the contents of ſuch ſtill, and hath ſeen the head put on and ready to be locked down; nor ſhall ſuch officer, when attending on any ſuch notice at the ſtill houſe of any ſuch rectifier or compounder, be obliged to continue there more than one hour at a time; and if ſuch rectifier or compounder ſhall not within that time have charged the ſtill or ſtills mentioned in that notice, and put on the head of the ſtill, ſo as they be ready to be locked down, he ſhall be obliged to give another notice before the officer ſhall be obliged to attend again. *ſ.* 20.

Removing or concealing waſh, &c.

And if any wort, waſh, tilts, or low wines in the poſſeſſion of any diſtiller, ſhall be removed, or concealed, the ſame ſhall be forfeited; and ſuch diſtiller, and the perſon employed to remove, or who ſhall receive the ſame, ſhall ſeverally forfeit 10s. for every gallon thereof. 26 *G.* 3. *c.* 73. *ſ.* 20.

And no wort, waſh, tilts, low wines or other liquor, ſhall be put into the ſtill, or removed from the back or veſſel wherein it was fermented, until the ſame ſhall have been guaged; on the penalty of 200l. and double duty. *Id. ſ.* 16.

Officers to keep an account and give credit, &c.

And the officer ſhall keep an exact account of all waſh, &c. whereon the new duties are impoſed, and ſhall for every 100 gallons of wort brewed from malt, grain, tilts, or mixture therewith, give the diſtiller credit for 20 gallons of ſpirits of the ſtrength of one to ten over hydrometer proof; if brewed from any other kind of *Britiſh* materials 15 gallons; if from melaſſes, or ſugar, 22 gallons; if from foreign refuſed wine, or foreign cyder, or waſh prepared from foreign materials except melaſſes and ſugar, 20 gallons of the ſtrength aforeſaid. And if ſuch officer on caſting up the ſtock of any diſtiller (except he be alſo a rectifier) at the ſtrength aforeſaid, ſhall find the quantity contained in the ſtock to exceed the quantity for which the diſtiller is entitled to credit, (making proper allowances for ſpirits for which permits have been granted,) every ſuch exceſs ſhall be taken to have been occaſioned by wort or other liquor not duly charged; and ſuch exceſs ſhall be forfeited, and may be ſeized by any officer; and the perſon in whoſe ſtock ſuch exceſs ſhall be found, ſhall forfeit 50l. *Id. ſ.* 25, 26.

Officers may take ſamples of wort.

And officers may take ſamples of wort, &c. not exceeding 12 gallons from each cooler, waſhback, or other veſſel, paying 1s. 6d a gallon for the ſame. *Id. ſ.* 18.

Manner of charging and working off waſh ſtills.

And every diſtiller ſhall, before he begins to draw off any low wines from the waſh ſtill, charge the ſame with wort on which the duties have been charged in the proportion of not leſs than three parts in four of the whole quantity ſuch ſtill, including the head, is capable of containing; and before he ſhall begin to draw off any low wines for exportation from ſuch waſh ſtill, he ſhall charge the ſame with wort, &c. in the proportion of not leſs than four parts in five. And the ſame ſhall be worked off within 24 hours from the time of taking the account of the charge of ſuch ſtill; on pain of 200l. *ſ.* 21.

And all low wines ſhall, within 12 hours after run off from the waſh ſtill, be conveyed into the low wine ſtill; and ſhall within the next 12 hours be drawn off and diſtilled into ſpirits; on the penalty of 10l. an hour. *Id. ſ.* 22.

Officer to take ſtock every three months of diſtillers and rectifiers.

And the officer ſhall every three months, if required, take an account of the ſtock of all diſtillers and rectifiers; and if any unfair increaſe ſhall be found, the ſame ſhall be forfeited and may be ſeized; and the perſon in whoſe ſtock ſuch exceſs ſhall be found ſhall forfeit 50l. *ſ.* 27, 28.

Rectifiers to mark the quantity and ſtrength of ſpirits.

And every rectifier ſhall mark the quantity and ſtrength of mixed ſpirits on the outſide of the caſk, upon 12 hours notice given him by the officer, and in default thereof, or if untruly marked, the ſame ſhall be forfeited, and alſo the caſks, and may be ſeized, and ſuch rectifier ſhall alſo forfeit 50l. *Id. ſ.* 33.

Strength of ſpirits.

And no diſtiller or maker ſhall ſell or ſend out any ſpirits for home conſumption of a greater ſtrength than one to ten over hydrometer proof; and no rectifier or compounder (whether a maker or not) ſhall ſell or ſend out any *Britiſh* brandy, rectified ſpirits, compound, or other *Britiſh* ſpirits, of a greater ſtrength than one in eight under hydrometer proof; and no diſtiller, maker, rectifier, compounder, or dealer in ſpirits, ſhall ſell or ſend out any *foreign ſpirits*; or have in his poſſeſſion any foreign and *Britiſh* ſpirits mixed together, except ſhrub, cherry, or raſpberry brandy, of a lower degree of ſtrength than one in ſix under hydrometer proof; on pain of forfeiting the ſame, together with the caſks, which may be ſeized by any officer. *ſ.* 31.

Clarke's hydrometer to be uſed.

And by 27 *G.* 3. *c.* 31. All ſpirits ſhall be deemed and taken to be of the ſtrength denoted by *Clarke*'s hydrometer (*a*).

(*a*) The 27 *G.* 3. *c.* 31. expired on 5th *April* 1788, but hath by ſeveral acts been continued; and by 38 *G.* 3. *c.* 35. is further continued till 5th *July* 1799.

And

Spirits in the custody of a dealer, not a rectifier.

And all rectified spirits which shall be found in the custody of any dealer not being a rectifier (except raw spirits or spirits of wine received by permit) if stronger than one in eight under hydrometer proof, shall be forfeited, and also the casks, and may be seized. 26 *G.* 3. *c.* 73. *s.* 34.

Officers may take samples of spirits.

And in order the better to examine the strength and quality of such spirits, any officer may take samples thereof not exceeding four gallons, paying after the rate of 7 *s.* a gallon for *British* spirits, and 13 *s.* a gallon for foreign spirits; and if any person shall obstruct such officer, he shall forfeit 100 *l.* *Id. s.* 36.

Casks to be marked and gauged.

And all fixed casks used for keeping such spirits, shall be entered at the proper office of excise, and gauged, on pain of 100 *l.* and forfeiture thereof, and all liquor contained therein: And moveable casks used for sending out or keeping such spirits, shall have its measure marked on some conspicuous part thereof; on pain of 50 *l.* *Id. s.* 38.

To be filled up that an account may be taken.

And every distiller or rectifier shall, on 12 hours notice in writing from the officer, fill up his moveable casks that are not then full, (except one cask of each sort of spirits which may remain in ullage,) within such 12 hours, that an account of his stock may be taken; and shall separate the different sorts of spirits, and keep the same separate for six hours next after, to enable such officer to take an account with greater certainty; on pain of 100 *l.* *Id. s.* 39.

Denomination of spirits.

And all *British* spirits of the third extraction, or which have been twice distilled from low wines, and had flavour communicated thereto, shall be deemed *British* brandy; if no flavour has been communicated thereto, the same shall be deemed *rectified British spirits.* And if of the second extraction, or once distilled from low wines, the same shall be deemed *raw British spirits.* And all *British* spirits distilled with juniper berries, carraway seeds, anise seeds, or other seeds or ingredients used in the compounding of spirits, shall be deemed *British compounds.* And all *British* spirits of a greater strength than one to two over hydrometer proof, shall be deemed *spirits of wine.* *Id. s.* 44.

Allowance for increase by water, &c.

And for making unto rectifiers and compounders an allowance for that increase by water, sugar, syrup, or fruit, which is necessary to render their spirits fit for consumption; there shall be allowed permits for sending out any number of gallons, not exceeding the rate of 150 gallons of *British* brandy, rectified *British* spirits, or compounds, for every 100 gallons of raw *British* spirits received from any distiller (not being a rectifier) of the strength of one to

ten

ten over hydrometer proof, or which they have made at that ſtrength. 30 *G.* 3. *c.* 37. *ſ.* 2.

Account of ſtock of rectifiers and compounders to be taken every three months.

And the officers ſhall take an account of the ſtock of rectifiers and compounders every three months at leaſt; and if any increaſe in quantity ſhall be found, unleſs received by permit, at the ſtrength aforeſaid, with an allowance of 50 gallons on every 100 gallons ſo made or received, computing at the ſtrength of one in $3\frac{3}{4}$ under hydrometer proof, a quantity equal to the quantity ſo found in exceſs ſhall be forfeited, and may be ſeized; and ſuch perſon ſhall alſo forfeit 50l. *ſ.* 3.

Strength of ſpirits to be ſent out.

And if any rectifier or compounder ſhall ſell or ſend out any *Britiſh* ſpirits or compounds, of a greater ſtrength than one in five under hydrometer proof, the ſame ſhall be forfeited, and treble the value thereof, or 50l. in the whole, at the option of the perſon who ſhall ſue; and the ſame may be ſeized, together with the caſks and veſſels containing the ſame. *ſ.* 6.

Officer to charge for materials miſſing.

The officer may keep an account of the ſeveral ſorts of waſh which ſhall be found by him in the hands of a diſtiller, and upon any decreaſe of ſuch waſh brewed or made from malted corn or corn unmalted, may charge ſuch diſtiller with ſo much low wines or ſpirits of the firſt extraction as one fourth part of the ſame waſh ſo decreaſed ſhall amount unto; and alſo with ſo much proof ſpirits or ſpirits of the ſecond extraction, as three fifth parts of the ſaid low wines ſo charged ſhall amount unto: and alſo upon any decreaſe of waſh made from cyder or perry, may charge ſuch diſtiller upon whom ſuch decreaſe ſhall be found, with ſo much low wines or ſpirits of the firſt extraction, as one fifth part of the ſame waſh ſo decreaſed ſhall amount unto; and likewiſe with ſo much proof ſpirits, or ſpirits of the ſecond extraction, as one half part of the ſame low wines or ſpirits of the ſecond extraction ſhall amount unto. 4 *An.* *c.* 12. *ſ.* 4.

When the ſtill has done working, the head ſhall be taken off.

Every rectifier and compounder ſhall take off the head of each ſtill, as ſoon as the ſame ſhall have done working; and it ſhall in no caſe be put on, until it ſhall be again charged and ready to work; nor until the officer ſhall have examined the quality of the ſpirits then in each ſuch ſtill; on pain that ſuch rectifier or compounder offending herein ſhall forfeit 100l. 23 *G.* 3. *c.* 70. *ſ.* 19.

Entry and payment of the duties.

The diſtiller ſhall weekly make entry of all waſh by him uſed for the making of low wines and ſpirits within each week, on pain of 10l.: And within a week after,

shall pay off the duties, on pain of double duty. 19 *G.* 3. *c.* 50. *s.* 4, 5.

Carrying out of the still house.

No distiller shall deliver or carry out any low wines, spirits, or aqua vitæ, to any of their customers, in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from *Sept.* 29, to *Mar.* 25, yearly between five in the morning and eight in the evening, and from *Mar.* 25, to *Sept.* 29, yearly, between three in the morning and nine in the evening; on pain of 10l. 7 & 8 *W.* *c.* 30. *s.* 15.

Permit for removal.

And all permits for removing *British* spirits shall correspond with the request notes, and shall be delivered with such spirits to the buyer, on forfeiture of the same to such buyer, and double the price thereof including the duties; and such buyer may be admitted to prove, that such spirits were delivered without a lawful permit: But if it shall appear at the hearing, that the seller took out a permit to remove such spirits to such buyer, and had a suitable decrease, the same shall be adjudged to have been sent out and delivered with a lawful permit.—Provided that no buyer shall avail himself of such forfeiture, unless complaint is made within 14 days after the delivery of the spirits. 26 *G.* 3. *c.* 73. *s.* 41, 2, 3.

Mixed spirits above four gallons, not to be sent out.

And no person shall send out any *British* spirits mixed with foreign spirits above the quantity of four gallons, on pain of forfeiting 50l. *Id. s.* 57.

Fraudulently making, or receiving spirits without a permit.

And if any distiller, maker, rectifier, compounder, or retailer of spirits shall be convicted before the commissioners, or one justice, of fraudulently making or having in his possession any spirits, either *British* or foreign, without having received a legal permit with the same, and that such offence was knowingly and wilfully committed, which must be set forth in the conviction; every such offender (over and besides all other penalties) shall forfeit his licence, and the same shall be void, and no new licence shall be granted to him for one month. *Id. s.* 45.

Persons having British spirits in their possession which have not been charged with the duty.

And if any person shall knowingly receive, buy, or have in his possession any *British* spirits, after the same have been removed from the place where made, and where they ought to have been charged with the duty, before the said duty hath been charged, (except such as have been condemned as forfeited,) whether he claim any property or interest therein or not, shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sort shall then bear in *London.* 26 *G.* 3. *c.* 77. *s.* 10, 11.

And

And no maker or rectifier ſhall receive into his cuſtody any raw *Britiſh* ſpirits in any caſk leſs than 100 gallons; and no diſtiller or rectifier, or dealer in ſpirits, ſhall receive any *Britiſh* brandy, compounds, raw ſpirits, or ſpirits of wine, but between five in the morning and ſeven in the evening, from 25th *March* to 29th *Sept.* incluſive; and between ſeven in the morning and ſix in the evening from 30th *Sept.* to 25th *March* incluſive; on forfeiture thereof, and alſo the caſks, which may be ſeized, and alſo 50l. *Id. ſ.* 46.

Times in which ſpirits are to be received, and ſize of the caſks.

iii. Spirits made in England *for exportation, or to be ſhipped as ſtores, or carried coaſtwiſe.*

By 2 *G.* 3. *c.* 5. every diſtiller intending to make or diſtil ſpirits for exportation, ſhall, four days at the leaſt before he ſhall begin to brew any corn or grain, or to mix any other materials for the making of waſh, to be diſtilled into low wines, in order to extract ſpirits for exportation, make a particular entry at the next office of exciſe, of every ſtill, copper, ton, waſhbatch, caſk, or other veſſel, which he ſhall make uſe of for the brewing, diſtilling, working, making, laying, or keeping any worts, waſh, low wines, or ſpirits; and alſo of the caſks or veſſels which he ſhall make uſe of for the brewing, holding, or keeping of the after-running or feints from the ſecond extraction which ſhall from time to time be drawn from every ſuch ſtill; and alſo of every workhouſe, ſtillhouſe, ſtorehouſe, warehouſe, or other place, by him uſed for the preparing, diſtilling, or keeping waſh, low wines, or ſpirits; and in ſuch entry ſhall inſert the day when he intends to begin firſt to brew any corn or grain, or to mix any other materials for the making of waſh, to be diſtilled into low wines, in order to extract ſpirits for exportation; and ſhall afterwards, from time to time, during the continuance of ſuch entry, give or leave notice in writing at the ſaid office of exciſe, or with the officer for the diviſion, four hours at leaſt before he ſhall begin any ſuch ſubſequent brewing or mixing, and ſhall inſert in ſuch notice the hour when he intends to begin; and ſhall alſo, from time to time, during the continuance of ſuch entry, give or leave notice in writing at the ſaid office of exciſe or with the ſaid officer, four hours at leaſt before any waſh is pumped up or otherwiſe conveyed into the ſtill, and ſhall inſert in ſuch notice the hour when he intends to begin; on pain of 100l. for every offence. And if after ſuch en-

Entry of houſes and veſſels for making ſpirits for exportation.

try ſo made, he ſhall not begin and proceed to brew or mix his materials as aforeſaid, on the day mentioned in ſuch entry, or within four hours afterwards; or having given ſuch notice, ſhall not begin and proceed in ſuch operations at the hour and time mentioned in ſuch notice, or in two hours afterwards; ſuch notice ſhall be void; and if he ſhall proceed without freſh entry or notice reſpectively, he ſhall forfeit the like ſum of 100l. *ſ.* 7.

Provided, that nothing herein ſhall extend to permit or authorize any diſtiller to make entry of his intention to make ſpirits for exportation, whoſe waſh ſtill will not contain 1600 gallons, and the ſpirit or low wine ſtill 800 gallons. *ſ.* 8.

Neither ſhall any diſtiller be permitted to diſtil ſpirits for exportation, although he may have made entry as aforeſaid, unleſs he ſhall actually have diſtilled into ſpirits all the waſh and low wines in his cuſtody for making of ſpirits for home conſumption, at leaſt 48 hours before the day mentioned in ſuch entry. *Id.*

Entry for exportation may be withdrawn, and an entry made for home conſumption.

Provided, that when any diſtiller ſhall be deſirous of diſtilling any ſpirits for home conſumption, and ſhall have actually diſtilled into ſpirits all the waſh, low wines, and feints in his poſſeſſion for the making of ſpirits for exportation, and ſuch ſpirits ſhall be locked up in the warehouſe as hereinafter is directed; he may withdraw his entry for exportation, and be at liberty to make a freſh and like entry for making ſpirits for home conſumption; and after ſix days from ſuch entry made, he may begin to brew or mix materials for waſh to be diſtilled into ſpirits for home conſumption: And if he ſhall begin contrary hereunto, he ſhall forfeit 200l. *ſ.* 9.

Manner of making and warehouſing for exportation.

And no waſh that ſhall be brewed or mixed for the extracting of ſpirits for exportation, ſhall be pumped up into the ſtill, or otherwiſe removed from the back or veſſel wherein the ſame was fermented, but in the preſence of an officer; and ſuch diſtiller ſhall run or draw off his low wines immediately from the ſtill into entered veſſels only, and continue them therein, ſo that the officers may take a true gauge of ſuch low wines; and ſuch diſtiller ſhall provide a proper caſk which ſhall be duly entered and gauged, into which the ſpirits ſhall immediately run from the ſtill, which caſk ſhall be ſufficient to contain the whole produce of ſpirits to be extracted from each ſtill when made up to the proper ſtrength ſuch ſpirits are required to be; and when the whole quantity of ſpirits ſhall be collected in ſuch caſk from each ſtill, ſuch diſtiller ſhall immediately

ately make up such spirits in the presence of the officer, to the strength of one to six under hydrometer proof: And a true gauge of such spirits so made up shall then be taken by the officer. And the said spirits shall immediately afterwards be put into casks, and secured in the presence of the officer in a warehouse to be provided and kept by the distiller, and duly entered at the proper office of excise; which spirits shall be kept there separate from all spirits made for home consumption; and no spirits for home consumption shall be put into the same warehouse; and such warehouse shall be secured under three locks, one to be provided by the distiller, and the other two by the officer of excise at the expence of the distiller; whereof one key to be kept by the distiller, another by the supervisor, and the third by the officer of excise, until the spirits shall be delivered out for rectification, or afterwards for exportation; which warehouse shall be secured to the satisfaction of the supervisor signified under his hand: And if any distiller for exportation shall act contrary to these directions; or shall obstruct the officer in gauging, or in taking samples, or in trying the proof of the spirits (which gauges, samples, and trials of proof the officers shall make as often as the commissioners shall direct, the samples to be returned when the commissioners shall find it expedient to give directions for that purpose); or shall open any of the locks in the absence of the officer, or make any way into such warehouse, or remove any part of the partition of it, or make any addition to, or any way alter the same, without notice to the supervisor and his consent in writing first had; or shall remove any of the said spirits from the warehouse, before the same shall be taken out for immediate rectification or exportation; or shall remove or conceal any wash or low wines for making spirits for exportation, or any such spirits, whether raw or rectified, either before the same are put into the warehouse or afterwards; he shall forfeit 500 l. *s.* 10.

But this shall not hinder any maker of spirits for exportation, from sending such spirits out of his locked warehouse to any other distiller; provided such maker and distiller give bond in double value of the spirits, and double duty which they would have been liable to if made for home consumption, for the due exportation thereof within three months; and provided leave in writing be obtained from the commissioners; and four hours notice thereof at least be given to the officer, that he may receive

the ſame into ſuch diſtiller's ſtock; and provided ſuch ſpirits be removed with a proper certificate from an exciſe officer: And ſuch diſtiller ſhall thereafter be liable to the ſame penalties for breach of directions, as the maker would have been. *ſ.* 11.

And to prevent diſtillers from working in the abſence of the officers; every ſuch diſtiller ſhall permit the officer to ſecure the heads of the ſtills, when the ſtills are not at work; and alſo the pumps for charging the ſtills and emptying the low wine and ſpirit caſk, ſo as to prevent the ſame from being uſed in the abſence of the officer; and alſo to ſecure the lid or head of the low wine and ſpirit caſks, and the ſafe at the end of the worm, to prevent any ſpirits or low wines from being ſecreted, whilſt the ſtill is at work. *ſ.* 18.

Taking out of the warehouſe for rectifying, or exportation.

No raw unrectified ſpirits ſhall be permitted to be exported. And when any diſtiller for exportation ſhall be deſirous to take any of his ſpirits out of the warehouſe in order to be rectified, or when rectified, and again depoſited in the warehouſe, in order to be immediately ſhipped for exportation, he ſhall thereof give four hours notice in writing to the ſuperviſor or officer of exciſe, and ſhall inſert in ſuch notice the day and hour when he intends ſo to do, and alſo the quantity and quality of ſpirits he deſires to take out, and whether ſuch ſpirits are raw or rectified, and out of what warehouſe, and whether the ſame are for rectification and by whom, or for immediate exportation, or to be ſent coaſtways, and to whom and to what port, and whether for merchandize or ſtores: And the ſuperviſor or officer ſhall attend and ſee the quantity taken out, and take an account of the ſame. And if ſuch diſtiller ſhall not begin and proceed to take the ſpirits out of the warehouſe at the time mentioned in the notice, or within two hours after, ſuch notice ſhall be void; and he ſhall give a freſh notice four hours at leaſt before he ſhall begin to take the ſaid ſpirits out of the warehouſe. And if he ſhall make default in any of the ſaid particulars, he ſhall forfeit 100*l.* *ſ.* 11.

And when any raw ſpirits ſhall be ſo taken out in purſuance of ſuch notice, the ſame ſhall be immediately pumped up, or put in the preſence of the officer into the ſtill or ſtills, and be rectified forthwith, and the ſpirits ſhall be run off immediately from the ſtill into a like caſk as is before directed to be provided and entred for the containing of ſpirits immediately diſtilled from low wines; and when the whole quantity of ſpirits deſigned to be made

into

into brandy ſhall be collected into ſuch caſk from each ſtill, the ſame ſhall be immediately made up in the preſence of the officer to the ſtrength of one to ſix under hydrometer proof, at which ſtrength all ſpirits are to be exported; and a gauge of ſuch ſpirits ſo made up ſhall then be taken by the officer, who ſhall keep an account thereof; and ſuch ſpirits ſhall immediately afterwards be put into caſks, and in the preſence of the officer either carried directly on ſhipboard for exportation (if intended to be immediately exported), or elſe into ſuch warehouſe to be locked up in manner aforeſaid. *ſ.* 13.

And if it ſhall happen, that the ſpirits diſtilled for exportation in one day belonging to any diſtiller, cannot for want of time be conveyed from the ſpirit caſk (into which they are directed to be run immediately from the ſtill) and locked up in the warehouſe; the officer ſhall gauge the ſame, and ſecure the lid of the ſaid ſpirit caſk, and take ſamples thereof: which ſpirits ſhall be locked up in the warehouſe the next morning (if not intended for immediate exportation). And if it ſhall appear that any decreaſe has been made in the quantity or quality of the ſaid ſpirits ſo gauged; or if any ſuch ſpirits ſhall have been removed in the abſence of the officer; the diſtiller ſhall be charged for the ſaid ſpirits ſo decreaſed or removed, double the duties which they would have been charged with if made for home conſumption. *ſ.* 14.

Spirits made for exportation, not to be taken out for home conſumption.

By ſeveral former acts, ſpirits made for exportation were permitted (under certain regulations) to be taken out of the warehouſe for home conſumption: but now, by the 21 *G.* 3. *c.* 55. no ſpirits made for exportation ſhall, in any caſe whatever, be delivered out of the warehouſe for home conſumption, *ſ.* 33.

To be returned to the warehouſe after rectifying.

When any quantity of raw ſpirits ſhall, in purſuance of any notice, be delivered out of the warehouſe, in order to rectify the ſame; as many gallons of rectified ſpirits, and of the ſame ſtrength when made up, ſhall be produced, as ſuch quantity amounted to when taken out of the warehouſe; allowing only for the feints. And the commiſſioners ſhall make juſt allowances for neceſſary waſte, and the difference that will ariſe between gauging and weighing ſpirits. Which feints ſhall alſo be run off from the ſtill directly into one large feint caſk, and ſhall be immediately gauged as ſoon as the ſtill is off, and an account thereof taken by the officer, and kept in ſtock by him; who may take ſamples of ſuch feints. Which feints ſhall be in like manner locked up in the warehouſe, and

ſhall be there put into one or more large caſks to be provided by the diſtiller, and marked with the word *Feints.* And every ſuch diſtiller ſhall, once a month at leaſt, diſtil all his feints, and make up the ſpirits to be produced therefrom of the ſtrength of one to ſix under hydrometer proof. And all ſuch ſpirits ſhall then be locked up, or exported as other ſpirits for exportation are hereby directed to be. 2 *G.* 3. *c.* 5. *ſ.* 17.

And by the 21 *G.* 3. *c.* 55. The diſtiller ſhall be allowed after the rate of ſix gallons for every ton, in full compenſation for all waſte, loſs, or damage (except in caſe of unavoidable accidents); and all decreaſe above that proportion ſhall be charged with double the duty which the ſpirits would have been charged with, if they had been made for home conſumption. *ſ.* 32.

Penalty for waſh or ſpirits miſſing.

By the 2 *G.* 3. *c.* 5. If any decreaſe ſhall be found in the *waſh* brewed or made for the diſtilling of ſpirits for exportation (except ſuch decreaſe as ſhall be made appear to the commiſſioners to have really and truly riſen from accidents); the officer ſhall charge double duty for the ſame, calculating ſuch waſh ſo found to be decreaſed, to produce the ſame quantity of low wines and ſpirits as waſh is preſumed to do when ſpirits are made for home conſumption: And if any decreaſe ſhall appear in the ſtock of *ſpirits* made for exportation, except ſuch as may be accounted for by certificate of the officer either as being exported for merchandize or for ſtores, or as being taken out for home conſumption on payment of duties by conſent of the commiſſioners, or by any allowance the commiſſioners ſhall have made for waſte or for any difference which may have ariſen between gauge and weight, or by being ſent coaſtwiſe for exportation, or by being ſent with the conſent of the commiſſioners to any other diſtiller in order to be rectified for exportation; the officer ſhall charge for all the ſpirits ſo decreaſed, double the duty ſuch ſpirits would have been charged with if made for home conſumption. *ſ.* 18.

And by the 21 *G.* 3. *c.* 55. For the better enabling the officers to make true charges on the apparent decreaſes of waſh diſcovered at the ſtill houſe of every diſtiller making ſpirits for exportation, every ſuch diſtiller, who between *Oct.* 1, and *June* 1, yearly, ſhall diſtil ſpirits for exportation, ſhall for every ſix gallons of waſh produce to the officer one gallon of ſpirits; and between *June* 1, and *Oct.* 1, for every ſeven gallons of waſh, one gallon of ſpirits: Otherwiſe they ſhall be charged for all the

waſh

waſh miſſing, over and above the ſaid ſix gallons and ſeven gallons, as for ſpirits made for home conſumption. *ſ.* 31.

And every diſtiller who, between the 15th *Nov.* and 15th *May*, ſhall diſtil ſpirits for exportation to foreign parts, ſhall, for every nine gallons of waſh found in his cuſtody, produce to the officer at leaſt two gallons of ſpirits: and between 15th *May* and 15th *Nov.* ſhall, for every ſix gallons of waſh ſo found, produce one gallon of ſpirits, of the ſtrength of one ſixth under hydrometer proof; and if the ſame ſhall fall ſhort of ſuch proportions, ſuch perſon ſhall pay 1s. 6d. for every gallon of waſh miſſing. 28 *G.* 3. *c.* 46. *ſ.* 77.

Bond to be given on exportation.

When any ſpirits made for exportation ſhall be entred for *Ireland*, or his majeſty's plantations in *America*, or any other parts beyond the ſeas in *Europe*, or any parts in *Africa* or *Aſia*; the exporter thereof, when the whole quantity of ſpirits intended at that time to be exported ſhall be ſhipped, ſhall immediately give bond in double value of the ſpirits entred for exportation, and double the duties ſuch ſpirits ought to have paid if they had been made for home conſumption, that the ſame ſhall (the danger of the ſeas and enemies excepted) be landed at the place of deſtination; and until ſuch bond ſhall be entred into by the exporter, the diſtiller from whoſe warehouſe ſuch ſpirits were ſent ſhall be charged for ſuch quantity of ſpirits ſo ſhipped for exportation, with double the duty ſuch ſpirits would have been charged with if made for home conſumption, and ſuch charge ſhall not be diſcharged till ſuch bond ſhall be given; and ſuch bond ſhall not be diſcharged, till a certificate be produced from the proper officer abroad, of the due landing thereof, and of oath being made before him by the maſter or other perſon having charge of the veſſel, that the ſame had not been fraudulently diminiſhed, relanded, or unſhipped; and until oath ſhall alſo be made by the exporter at home; that to the beſt of his knowledge or belief, the ſame were diſpoſed of at the place referred to in the certificate; and the condition of the bond ſhall be, to produce ſuch certificate from *Ireland* in ſix months, from *America* in 18 months, from other parts of *Europe* in 15 months, from *Africa* in 18 months, and from *Aſia* in three years, danger of the ſeas and enemies excepted. 2 *G.* 3. *c.* 5. *ſ.* 21, 22.

Bond for carrying coaſtwiſe for exportation.

When ſpirits made for exportation ſhall be delivered out of the warehouſe, to be ſent *coaſtwiſe* (with a certificate from the proper officer) in order for exportation: the

distiller shall, on taking out the same, give bond in double the value of the spirits, and double the duties which are payable for the like spirits distilled for home consumption, that the same shall (the danger of the seas and enemies excepted) be really and truly landed in such port of this kingdom for which the same shall be entered. And such bonds shall not be discharged or delivered up, till a certificate shall be produced from the chief officer of excise of the port for which such spirits were entered, testifying the landing thereof, and describing the number of the casks or other package, and the marks, and the quantity of spirits landed; and also testifying, that the master, mate, purser, or other person having charge of the vessel, had made oath before him, that the said spirits were fairly landed there, and that at the time of landing they were of the same quality as when shipped on board, and that no part of such spirits had been wilfully or fraudulently diminished, relanded, or unshipped since the same were put on board; and also testifying, that the same were really, and truly, since their arrival there, exported from thence to foreign parts; and the condition of all such coast bonds shall be, to produce such certificate in six months from the date thereof. And such spirits so to be sent coastwise, when landed at the port for which they were entered, shall be immediately put into a proper warehouse, and there continued until the same shall be exported, and shall be secured by the person to whom they are sent, and by the said chief officer, by two locks and keys to be provided by the person to whom the spirits were sent, one key to be kept by the said person, and the other by the officer. And all masters, commanders, and other persons belonging to any vessel carrying goods coastwise, who shall assist or connive at the fraudulent landing, embezzling, or diminishing any spirits sent coastwise, and all other persons concerned in unshipping the same, or to whose hands the same shall knowingly come, shall be subject to all penalties and forfeitures inflicted by any former act for enforcing the fair exportation of spirits to foreign parts. 2 *G.* 3. *c.* 5. *s.* 19.

Certificate for carrying coastwise.

And all low wines or spirits carried *coastwise* without a certificate from the officers of excise where they were made, that the duty hath been paid, shall be forfeited, and seized by the officers, where they shall be brought in. 3 *G.* *c.* 4. *s.* 17.

Exportation duty free.

No wash which shall be brewed or made for the making of low wines in order to extract spirits for *exportation*, nor any

any ſuch low wines or ſpirits, ſhall be chargeable with any duties of exciſe, and all drawbacks thereupon, whether payable by the commiſſioners of exciſe or cuſtoms ſhal ceaſe. 2 *G.* 3. *c.* 5. *ſ.* 5, 6.

Bounty on exportation.

For the encouragement of the exportation of ſpirits made from *corn*; there ſhall be a bounty of 3*l.* 12 *s.* for every ton of ſpirits made from corn, which ſhall be exported as merchandize. And on oath made before two commiſſioners of exciſe, or juſtices of the peace for the place from which ſuch ſpirits are intended to be exported, that the ſame were drawn and made in *Great Britain* from corn under the regulations of this act, and not mixed with any other materials except what were neceſſary for rectifying the ſame, and that ſince the making thereof the ſame have been properly ſecured in a warehouſe according to the directions of this act, and that the ſame are to be exported for merchandize to be ſpent beyond the ſeas; and on producing a certificate under the hand of the officer of exciſe for the port or place where ſuch ſpirits were ſhipped, of the quantities ſo ſhipped, and that the ſame were ſhipped in the preſence of ſuch officer; the diſtiller ſhall be paid by the commiſſioners of exciſe, or their collector for the port or place where ſuch ſpirits ſhall be ſhipped, the ſaid bounty of 3*l.* 12*s.* a ton, and ſo in proportion for a greater or leſs quantity. *Id. ſ.* 20. 27 *G.* 3. *c.* 13. *Sched.* (F).

Drawback on exportation.

By the former acts, it was generally provided, that home ſpirits might be exported, and a drawback of the duties was to be allowed thereupon.

And by the 6 *G.* 2. *c.* 17. for ſpirits drawn from *Britiſh* corn, there was to be allowed a drawback by the exciſe officers at the port of ſhipping, of 4*l.* 18*s.* a ton, in full of all drawbacks: Except that from every ton of ſpirits drawn from barley malt, or other corn, there ſhall be paid by the officers of the cuſtoms, when barley is 24*s.* a quarter, or under 1*l.* 10*s.* in like manner as for corn exported. *ſ.* 7, 8.

And by the 33 *G.* 2. *c.* 9. there was to be an additional drawback of 24*l.* 10*s.* a ton, on all *Britiſh* made ſpirits exported; oath being made before two commiſſioners of exciſe or juſtices of the peace, that the duties were paid, and that the ſame were to be exported for *merchandize* to be ſpent beyond the ſeas. *ſ.* 15.

Provided, that no drawbacks ſhall be allowed, for any *Britiſh* made ſpirits, exported as merchandize, in any caſk containing leſs than 100 gallons, or in any veſſel of leſs burden than 100 tons, *Id. ſ.* 16. Except to *Africa* and *Newfound-*

Newfoundland, unto which places they may be exported as merchandize in veſſels not leſs than 70 tons. 6 *G.* 3. *c.* 46. *ſ.* 9.

And by the ſaid act of the 33 *G.* 2. *c.* 9. it is further enacted, that the ſame drawbacks and allowances ſhall be made on *Britiſh* made ſpirits *ſhipped as ſtores*, or ſpent on ſhipboard, on giving five days notice thereof to the commiſſioners of exciſe or to whom they ſhall appoint, mentioning therein the deſtination of the voyage, the tonnage of the ſhip, and the number of mariners intended to be employed; which ſaid commiſſioners, or perſon appointed by them, ſhall aſcertain the quantity of ſuch ſpirits which ſhall be ſhipped on board ſuch veſſel as ſtores, and the ſize and marks of the caſks in which ſuch ſpirits ſhall be ſhipped. And on oath being made before one commiſſioner or juſtice of the peace, or other perſon authorized by the commiſſioners, that the duties are paid, and that the ſame are to be ſhipped as ſtores to be ſpent in the voyage; and on certificate from the officer of exciſe where ſuch ſpirits were ſhipped of the quantity ſo ſhipped, and that the ſame were proof ſpirits, and ſhipped in the preſence of ſuch officer, the duty ſhall be allowed or paid back. *ſ.* 15.

Provided, that no drawback ſhall be allowed for ſpirits ſhipped as *ſtores*, in any veſſel of leſs than 100 tons burden. *ſ.* 16.

Such ſpirits ſhipped as ſtores, being relanded,

And if any ſuch ſpirits ſhipped for *ſtores*, ſhall be relanded in *Great Britain*, *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, unleſs in caſe of diſtreſs to ſave the goods from periſhing (of which notice ſhall immediately be given to the proper officer); then, not only all ſuch ſpirits and the caſks or other package ſhall be forfeited, but alſo the perſon who ſhall bring, or procure ſuch ſpirits to be relanded or ſhall be aſſiſting or otherwiſe concerned in unſhipping the ſame, or to whoſe hands the ſame ſhall knowingly come after the unſhipping, or by whoſe privity or direction the ſame ſhall be relanded, ſhall forfeit double the amount of the drawback, and alſo the caſks and other package, together with the veſſels and boats, and all the horſes or other cattle and carriages whatſoever, made uſe of in landing, removing, or carrying the ſame; which may be ſeized by any officer of the cuſtoms or exciſe. Maſter aſſiſting therein, or conniving thereat, ſhall (over and above all other penalties) be impriſoned for ſix months. And if the package ſhall be altered at any time after the ſhipping thereof, and before the arrival of the ſhip at the place of diſcharge; the maſter, or other perſon taking charge of the veſſel, ſhall forfeit 100*l.* *ſ.* 18.

And

And whereas ſpirits ſhipped for ſtores are frequently concealed from the officers, on pretence of being put underneath other goods; all ſpirits ſhipped for ſtores, ſhall, during the time the veſſel ſhall be in port, be openly ſtowed and kept, ſo that the officers may at any time examine the ſame; on pain of forfeiting double the duty of all ſuch ſtores which ſhall not be ſo ſtowed and kept, or produced and ſhewn to the officers of exciſe, according to the rate ſuch ſpirits would have been charged with if made for home conſumption. 2 *G.* 3. *c* 5. *ſ.* 21. or concealed.

On the exportation of rum or ſpirits of the produce of the *Britiſh* plantations in *America*, as merchandize, in lieu of all former drawbacks, all the duties of cuſtom ſhall be drawn back; and rum exported from the rum warehouſe, before payment of the exciſe duties, ſhall be diſcharged of the ſaid duties of exciſe. 33 *G.* 2. *c.* 28. *ſ.* 1, 2. Exportation of rum.

And on oath made before two commiſſioners or juſtices, that the rum is to be exported for merchandize to be ſpent beyond the ſeas; and on producing a certificate from the exciſe officer of the quantity ſhipped, and that a certificate was produced from the proper officer of delivery from the warehouſe on bond being given for the due exportation thereof, and alſo upon delivery of ſuch laſt mentioned certificate, the perſon having cuſtody of the bond for payment of the duties ſhall deliver it up; or if only a part of the rum contained in the bond ſhall be certified to be ſhipped off, then ſuch quantity ſhall be indorſed upon the bond. 33 *G.* 2. *c.* 28. *ſ.* 1, 2. 8 *G.* 3. *c.* 25. *ſ.* 7.

Provided, that the ſaid drawback ſhall not be allowed for any rum exported in any caſk containing leſs than 100 gallons, or ſhipped on board any veſſel of leſs burden than 100 tons (except to *Africa*, *Ireland*, and *Newfoundland*; unto which places they may be exported as merchandize, in any veſſel not being of leſs burden than 70 tons, 6 *G.* 3. *c.* 46. *ſ.* 9.); or exported from any port not being the port of its importation. 33 *G.* 2. *c.* 28. *ſ.* 6.

And if after delivery from the ſaid warehouſe any rum ſhall be concealed; or not ſhipped within 12 hours; or the caſks or package be opened, or any part be taken out, or the quality be altered; all ſuch rum ſhall be forfeited with the caſks and package, and may be ſeized by any officer of exciſe; and the bond for exportation ſhall be put in ſuit, unleſs the commiſſioners ſee cauſe to forbear the ſame. *ſ.* 8.

Officers may take samples.

And whereas doubts have arisen whether officers of excise may take by way of sample of rum and spirits the produce of the *British* sugar plantations, or *British* spirits made from melasses which shall be *exported* from this kingdom, more than one pint in the whole out of one cask or package, it is enacted by 28 *G.* 3. *c.* 37. that such officer may take as many samples as he shall think fit (neither of such samples to exceed half a pint) out of each of such casks or packages, paying (if demanded) after the rate of 3 *s. per* gallon. And if any person shall obstruct or hinder any such officer in taking such samples as aforesaid, he shall for every such offence forfeit 100*l.* *s.* 16.

And such officers may in like manner take samples of all such rum or spirits the produce of the *British* sugar plantations *shipped as stores.* *Id. s.* 17.

Rum, &c. shipped as stores being relanded.

And if any such rum or spirits *shipped as stores*, shall be relanded, the same, together with the casks or other package, and also the boats, vessels, horses, cattle, and carriages, made use of in relanding or removing thereof, shall be forfeited, and may be seized by any officer of customs or excise: and every person who shall so unship, or cause to be unshipped, any such rum or spirits, or shall be assisting or concerned therein, or to whose hands the same shall knowingly come, shall forfeit treble the value thereof; and if any master or other person on board such vessel shall assist in, or connive at such relanding, he shall (over and above all other penalties) forfeit 100*l.* *Id. s.* 18.

iv. *Spirits made in* England *to be exported to* Scotland, *or in* Scotland *to be brought to* England.

By 33 *G.* 3. *c.* 61. *s.* 29. Spirits distilled in *England* for exportation to *Scotland*, or in *Scotland* to be brought into *England*, are to be subject to the rules and regulations contained in 28 *G.* 3. *c.* 46. (*a*)

Licence to be taken out, by every distiller or rectifier

Every distiller and rectifier in *England* for exportation to *Scotland*, shall take out a licence from the officers of excise for which shall be paid for every gallon *English* wine measure of the contents of his still (including the head and every part thereof, or other apparatus therewith

(*a*) The act of 28 *G.* 3. *c.* 46. was at first but temporary; but by 33 *G.* 3. *c.* 28. *s.* 24. the same is made perpetual.

connected

connected as high as the ſteam can aſcend) if the materials are *Britiſh*.

		£.	s.	d.	£.	s.	d.
By 33 *G.* 3. *c.* 61. *ſ.* 33.	-	9	0	0			
35 *G.* 3. *c.* 59. *ſ.* 1.	-	9	0	0			
37 *G.* 3. *c.* 17. *ſ.* 1.	-	36	0	0			
					54	0	0

If from melaſſes or ſugar or any mixture therewith.

By 33 *G.* 3. *c.* 6. *ſ.* 30.	-	15	0	0			
35 *G.* 3. *c.* 57. *ſ.* 1.	-	15	0	0			
37 *G.* 3. *c.* 17. *ſ.* 1.	-	60	0	0			
					90	0	0

If from foreign refuſed wine or foreign materials (except melaſſes and ſugar).

By 33 *G.* 3. *c.* 61. *ſ.* 30.	-	18	0	0			
35 *G.* 3. *c.* 57. *ſ.* 1.	-	18	0	0			
37 *G.* 3. *c.* 17. *ſ.* 1.	-	72	0	0			
					108	0	0

If uſed for rectifying or compounding ſpirits or ſtrong waters.

By 33 *G.* 3. *c.* 61. *ſ.* 30.	-	9	0	0			
35 *G.* 3. *c.* 57. *ſ.* 1.	-	9	0	0			
37 *G.* 3. *c.* 17. *ſ.* 1.	-	36	0	0			
					54	0	0

Which licence ſhall be taken out ten days before the perſon begin, on pain of forfeiting 200l. 28 *G.* 3. *c.* 46. *ſ.* 37, 38. 33 *G.* 3. *c.* 61. *ſ.* 30. 37 *G.* 3. *c.* 17. *ſ.* 1. ten days before he begin.

Which duty on licences ſhall be paid by inſtalments as particularly ſet forth in the ſaid acts. Duty to be paid by inſtalments.

And for every gallon of ſpirits made in *Scotland* and brought into *England*, of a ſtrength not exceeding one to ten over hydrometer proof, ſhall be paid by the importer before landing thereof an exciſe duty as follows: Duty on importation from Scotland.

		s.	d.	s.	d.
By 33 *G.* 3. *c.* 61. *ſ.* 34.	-	3	2½		
34 *G.* 3. *c.* 2. *ſ.* 1. more	-	0	5½		
37 *G.* 3. *c.* 14. *ſ.* 1. ditto	-	0	5½		
39 *G.* 3. *c.* 23. ditto	-	0	5½		
				4	7

And for every gallon of a greater ſtrength and not exceeding 3 *per cent.* above that ſtrength, an additional duty in proportion to the ſurplus ſtrength. 33 *G.* 3. *c.* 61. *ſ.* 34. 34 *G.* 3. *c.* 2. *ſ.* 1. 37 *G.* 3. *c.* 14.

Entry to be made.

By which ſaid act of 28 *G.* 3. *c.* 46. after reciting, that it is expedient that ſpirits made in *England* to be exported to *Scotland*, or made in *Scotland* to be exported to *England*, ſhould be under certain rules and regulations; it is enacted, that all diſtillers who ſhall diſtil ſpirits in *England* to be exported to *Scotland* and contrariwiſe, ſhall make four days previous entry of the ſtills and places uſed by them for that purpoſe; and ſhall give notice of the day they intend to begin to brew, and from what ſort of materials; on pain of forfeiting 100 l. *ſ.* 35.

And if ſuch diſtillers ſhall not begin their operations in an hour after the time ſpecified in ſuch notice, they ſhall give a freſh one, on the like penalty. *Id.*

Size of the ſtill.

And no ſuch diſtiller ſhall be permitted to make entry, or give notice of his intention to make ſpirits in *England* to export to *Scotland*, whoſe waſh ſtill will not contain 1600 gallons, and his ſpirit or low wine ſtill 850 gallons: nor ſhall he be permitted to diſtil ſpirits for ſuch exportation, although he may have made entry as aforeſaid, unleſs he ſhall have diſtilled into ſpirits all the waſh and low wines in his cuſtody, for the making ſpirits for home conſumption, 48 hours before the day mentioned in ſuch entry. *ſ.* 36.——33 *G.* 3. *c.* 61. *ſ.* 29.

Diſtillers may withdraw their entry for exportation and make an entry for home conſumption.

And if any ſuch diſtiller, having taken out ſuch licence, ſhall withdraw his entry for making ſpirits for exportation, and ſhall make an entry for home conſumption, he ſhall be allowed an abatement of the licence duty for every day the ſtill is ſo uſed in making ſpirits for home conſumption; if from *Britiſh* materials, $7\frac{2}{10}$ d. for every gallon of the contents of ſuch ſtill; if from melaſſes or ſugar, 1 s.; if from foreign refuſed wine, &c. 1 s. $2\frac{4}{13}$ d.; and for ſtills employed in rectifying, $7\frac{1}{10}$ d. 28 *G.* 3. *c.* 46. *ſ.* 41. 33 *G.* 3. *c.* 61. *ſ.* 31.

And ſuch diſtillers who have diſtilled all their waſh into ſpirits for exportation, may make a freſh entry for home conſumption; and if they begin without making ſuch entry, every ſuch diſtiller ſhall forfeit 200 l. 28 *G.* 3. *c.* 46. *ſ.* 53.

And every ſuch diſtiller ſhall clear off all the ſaid duties in one week after accrued, on pain of forfeiting double duty. *ſ.* 43.

And every ſuch diſtiller, before he begins to draw off any low wines from his waſh ſtill, ſhall charge the ſame with wort or waſh in the proportion of not leſs than four parts in five of the whole quantity ſuch ſtill will contain; and

and ſhall work off the ſame in 24 hours, on the penalty of 200l. *ſ.* 44.

Waſh for extracting ſpirits for exportation from *England* to *Scotland*, ſhall not be chargeable with any exciſe duty. *ſ.* 46.

Waſh for extracting ſpirits for exportation to Scotland.

And every diſtiller in *England* for exportation to *Scotland*, ſhall for every 100 gallons of waſh made from *Britiſh* materials found in his cuſtody between 5th *July* 1788, and 6th *July* 1789, produce to the ſight of the officer at leaſt 16½ gallons of ſpirits of the ſtrength of one to ten over hydrometer proof; and for every 100 gallons of waſh made from melaſſes or ſugar 18½ gallons of ſpirits; and for every 100 gallons of waſh made from foreign refuſed wines, *&c.* 16½ gallons of ſpirits: and for every deficient gallon he ſhall pay, if the materials be *Britiſh*, 2s. 9d.; if melaſſes or ſugar, 2s. 10½d; if foreign refuſed wine, *&c.* 5s.; and in default of payment thereof, ſhall forfeit double the duty. *ſ.* 47.

And no waſh ſhall be pumped up into the ſtill, or removed from the veſſel where it was fermented, but in the preſence of the ſurveying officer; and ſhall be gauged and ſecured in a warehouſe under three locks and keys, one thereof to be kept by the diſtiller, another by the ſupervifor, and the third by the gauger. And ſuch diſtillers, removing waſh from backs, or removing or running off ſpirits from ſtills contrary to this act, or obſtructing the officer in taking ſamples, *&c.* or neglecting to provide warehouſes, *&c.* or opening any doors in the abſence of the officer; or removing ſpirits, or concealing waſh, *&c.* ſhall forfeit 200l. *ſ.* 48.

And if ſuch ſpirits cannot, for want of time, be conveyed to and locked up in the warehouſe, they ſhall be gauged and ſecured in the ſpirit caſk; and for every gallon decreaſe therein, ſuch diſtiller ſhall forfeit 10s. *ſ.* 49.

And if ſuch diſtiller ſhall be deſirous of taking any ſuch ſpirits from the warehouſe, he ſhall give four hours previous notice to the officer, who ſhall attend and ſee the ſame taken out; and if not taken out within one hour of the time ſpecified in the notice, a freſh one ſhall be given, on the penalty of 100l. *ſ.* 50.

Raw ſpirits taken out of the warehouſe to be rectified.

And when any raw ſpirits ſhall be taken out of any warehouſe to be rectified, the ſame ſhall be in the preſence of the officer, and ſhall be rectified forthwith, and put into caſks, and ſhall be made to the proper ſtrength, and gauged, and either put on ſhipboard, or into ſuch warehouſe as aforeſaid. *ſ.* 51.

And on taking out spirits from warehouses to be rectified, an allowance shall be made of two gallons for every 100 gallons of decrease; and for any extra deficiency not properly accounted for, a duty shall be paid of 5 s. *per* gallon. *s.* 52.

Spirits may be sent from the warehouse of any maker of spirits, to any other distiller, under certain regulations specified in the act. *Id.*

Bond. And bond shall be given for the due exportation of such spirits; and if the same shall be afterwards unshipped, or laid on land (unavoidable accidents excepted), the same shall be forfeited, and may be seized by any officer of excise. *s.* 54.

Entry to be made of spirits brought from Scotland. And entry shall be made of all spirits imported from *Scotland*, and the import duty paid, and spirits landed in 20 days, otherwise the same shall be forfeited, together with the casks and package, which may be seized; and such spirits shall be publicly sold to satisfy the duty, and the overplus to go to the officer who seized the same. *s.* 57.

And in the entries of spirits imported from *Scotland*, the number of casks, or other package, containing such spirits, and the number and mark of each, shall be inserted, on pain of forfeiting such spirits, casks, and package, which may be seized. *s.* 58.

Size of the vessels and casks. And no spirits shall be sent from *Scotland* to *England*, or from *England* to *Scotland* by land, or in vessels of less than 70 tons burden, or in casks containing less than 100 gallons, on forfeiture thereof, together with the casks or package; and also the vessels, boats, horses, cattle, and carriages employed therein, which may be seized. *s.* 59.

Strength of spirits. If spirits shall be imported into *Scotland* from *England*, or into *England* from *Scotland*, of a strength greater than one to ten over hydrometer proof, they shall be forfeited, together with the casks and package, which may be seized. Provided, that if the spirits manufactured in *Scotland*, and imported into *England*, be of a greater strength than as aforesaid, and such excess shall not exceed three *per centum* over and above the said strength, such spirits shall not be forfeited, but shall be charged with a further duty proportioned to their said surplus strength. *s.* 60.

Permit. Spirits sent by water from *England* to *Scotland*, or the contrary, shall be accompanied with a permit, on pain of forfeiture thereof, and also the casks and packages, which may be seized. But the same shall not be liable to seizure on account of any small difference or deficiency in the gauge

gauge at their arrival, when the same is proved to have been occasioned by accident, and without fraud. *s.* 61.

And if any such distiller, rectifier, compounder, or dealer in spirits, or servant belonging to any such person, shall obstruct any officer in the execution of this act; he shall forfeit 200 l. *s.* 78. Obstructing the officers.

v. *Matters relating to* Importers *and* Dealers *in Spirits by Wholesale and Retail; and the recovering and Application of Penalties.*

By 24 *G.* 3. *c.* 41. *sess.* 2. every *brandy dealer* or person selling brandy or other spirituous liquors, (not being a retailer, rectifier, or distiller,) shall take out a licence yearly, and pay for the same 5 l. And shall renew the same annually, ten days at least before the end of the year; on pain of forfeiting 30 l. *s.* 6, 7. [And by 29 *G.* 3. *c.* 63. *s.* 7. 100 l.] Licence to brandy dealers.

And every person who shall have in his custody above 63 gallons, shall be deemed a seller and dealer in such liquors. 6 *G.* *c.* 21. *s.* 18. Who shall be deemed a seller and dealer.

And by 30 *G.* 3. *c.* 38. all former duties respecting licences for selling spirituous liquors by retail are repealed, and the following duties imposed in lieu thereof: After 10th *Oct.* 1790 every *retailer* of distilled spirituous liquors or strong waters, shall take out a licence from the officers of excise, for which he shall pay, if the dwelling-house in which he shall reside or retail the same at the time of taking out such licence shall not be rated under the authority of 38 *G.* 3. *c.* 40. "for imposing a duty on inhabited houses," at a rent of 15 l. a year £. 4 14 0 Licence for retailing spirits.

If rated at 15 l. a year and under	20 l.	-	5	2	0
Ditto 20 l. ——	25 l.	-	5	10	0
Ditto 25 l. ——	30 l.	-	5	18	0
Ditto 30 l. ——	40 l.	-	6	6	0
Ditto 40 l. ——	50 l.	-	6	14	0
Ditto 50 l. or upwards	-	-	7	2	0

Which licence shall continue in force until and upon the 10th day of *October* next ensuing the granting thereof, and no longer: Provided nevertheless, that where such licence shall be first granted between the 5th day of *April* and the 10th day of *October* in any year, there shall be charged only a rateable proportion of the money aforesaid, according to the time for which such licence shall be granted. *s.* 6, 7, 8.

Who shall be deemed a retailer.

And every person who shall sell or expose to sale any distilled spirituous liquors or strong waters mixed or unmixed, in less quantity than two gallons, shall be deemed a *retailer*. 17 *G.* 2 *c.* 17. *s.* 20. 30 *G.* 3. *c.* 38. *s.* 15.

Licence to be renewed annually.

And such licence shall be renewed annually ten days at least before the expiration of the former licence, on the penalty of 50 l. 30 *G.* 3. *c.* 38. *s.* 9.

Persons in partnership.

But persons in partnership need only take out one licence for one house, shop, or place. *s.* 10.

To be first licensed to sell ale.

No person shall have a licence to retail spirituous liquors, until he shall have been licensed to sell ale or spirituous liquors by two justices. 9 *G.* 2. *c.* 23. *s.* 14. 16 *G.* 2. *c.* 8. *s.* 11. 5 *G.* 3. *c.* 46. *s.* 22.

In the case of *K.* v. *Downes* and another, *H.* 30 *G.* 3. it was determined, that a person who sells spirituous liquors by retail without a licence from two justices, is liable to the penalties of 5 *G.* 3. *c.* 46. (*a*), though he has a licence from the commissioners of excise to retail spirituous liquors. *Durnf.* and *East*, 3 V. 560.

Conviction for selling spirits, &c. without a licence from two justices, or keeping a disorderly house.

And by 9 *G.* 2. *c.* 23. *s.* 15. for the more easy convicting of persons who shall sell spirituous liquors by retail without a licence from two justices, or who shall keep a disorderly house where sold, the conviction may be in the following form, or to the like effect:

Westmorland. } A. O. *is convicted on his own confession, (or on the oath of* A. W.) *of having sold strong waters in the parish of* ——— *in this county, on the* ——— *day of* ——— *without being duly licensed thereto by two justices of peace* [or as the case may be]. *Given under my hand and seal*, &c.

Where an ale licence shall be refused.

But by 28 *G.* 3. *c.* 37. no person licensed to retail spirituous liquors as aforesaid, and who shall afterwards be refused by the justices to renew his licence to sell ale, shall be liable to pay for such spirit licence for any time elapsed after the expiration of such ale licence. *s.* 30.

Or a month's notice given.

And by 29 *G.* 3. *c.* 63. every such licensed person, who shall give to the collector or supervisor of excise, one month's previous notice of his intention of leaving off retailing of spirits, and shall leave off accordingly, shall not

---

(*a*) See the penalties of this act, title **Alehouses**, Head, *Selling Ale without Licence*.

be liable to the payment of any further duty after he ſhall have ſo left off, and ſuch licence ſhall be void. *ſ.* 5.

Licenſed perſon dying or removing.

And on the death or removal of any ſuch licenſed perſon, the officers of exciſe may authorize the executors or adminiſtrators, wife or child, of ſuch deceaſed perſon, or the aſſigns of ſuch perſon ſo removing, to carry on ſuch trade the remainder of the year. *Id.*

Who only ſhall be licenſed.

Provided always, that no licence ſhall be granted by virtue of this act, to any other than ſuch perſons only, as might have been licenſed before the paſſing thereof. *ſ.* 14.

And no licence ſhall be granted, except to ſuch perſons only who keep taverns, victualling houſes, inns, coffee-houſes, or ale-houſes; and all other licences ſhall be void; and if any licenſed perſon ſhall exerciſe the trade of a diſtiller, grocer, or chandler, or keep a brandy ſhop for ſale of ſpirituous liquors, the licence ſhall be void. 17 *G.* 2. *c.* 17. *ſ.* 19.

And no licence ſhall be granted within the limits of the head office of exciſe in *London*, but to ſuch as occupy tenements of 10 l. a year, and pay pariſh rates for the ſame; or in places where the occupiers of houſes are not rated to the church and poor, then to ſuch perſons as pay rent of 12 l. a year, and not otherwiſe: nor to perſons in any other part of the kingdom, but ſuch as pay to the church and poor: And no licence ſhall be of any avail longer than he ſhall be ſo qualified. 24 *G.* 2. *c.* 40. *ſ.* 8. 26 *G.* 2. *c.* 13. *ſ* 9.

To be licenſed only where they dwell.

And no licence ſhall impower any perſon to ſell ſpirituous liquors in any place, except in the houſe or places thereto belonging, wherein they ſhall retail the ſame at the time of granting the licence. 17 *G.* 2. *c.* 17. *ſ.* 22. 27 *G.* 3. *c.* 30. *ſ.* 4. 30 *G.* 3. *c.* 36. *ſ.* 10.

Penalty for ſelling ſpirits without a licence.

By 16 *G.* 2. *c.* 8. *ſ.* 9. retailers of ſpirituous liquors, without a licence from the officers of exciſe, were ſubject to a penalty of 10 l. By 24 *G.* 2. *c.* 40. *ſ.* 9. all liquors found in the cuſtody of ſuch perſons, or within ſix calendar months after conviction, were to be ſeized. And by 13 *G.* 3. *c.* 56. *ſ.* 1. and 30 *G.* 3. *c.* 38. *ſ.* 9. after reciting, that the ſaid penalty of 10 l. is ſometimes inſufficient to deter offenders, it is enacted, that if any perſon ſhall by himſelf, or by any other to his benefit, retail any diſtilled ſpirituous liquors or ſtrong waters, without a licence from the officers of exciſe, he ſhall forfeit 50 l. to be recovered, (F. G. H. I. K. L.) levied and mitigated as by the laws of exciſe, or in the courts of *Weſtminſter*.

Mitigation.

Provided, that the ſaid penalty ſhall not be mitigated below the ſum of 5 l. 13 *G.* 3. *c.* 56. *ſ.* 4.

Retailers houſes to be entered.

And every perſon who ſhall retail leſs than two gallons, ſhall ten days before make entry in writing of all warehouſes, ſhops, cellars, or other places by him intended to be uſed, at the next exciſe office; and of all ſpirituous liquors therein; on pain of 20 l. for every place, and 40 s. for every gallon not entered, and alſo the liquors and caſks. 9 *G.* 2. *c.* 23. *ſ.* 6. 30 *G.* 3. *c.* 38. *ſ.* 10.

Certain words to be put up.

And by the 19 *G.* 3. *c.* 69. Every importer for ſale or dealer in foreign ſpirituous liquors who ſhall ſell the ſame either by wholeſale or retail, ſhall cauſe to be painted in large legible characters, over the outer door, or in the front, or on ſome conſpicuous part of every houſe, ſhop, warehouſe, cellar, vault, or other place, ſo uſed by him, the words *Importer of*, or *Dealer in*, *ſpirituous liquors*; on pain of 50 l. *ſ.* 18.

Buying of perſons not having thoſe words put up.

And if any importer or dealer in foreign ſpirituous liquors ſhall buy any foreign ſpirituous liquors of any other perſon than of an importer or dealer over the door of whoſe ſhop or other place the words aforeſaid ſhall be written or painted; he ſhall forfeit 100 l. —— Provided, that ſuch dealer ſhall not be ſubject to the ſaid penalty, by reaſon of the purchaſe of any foreign ſpirituous liquors whilſt they remain on board the ſhips wherein they were lawfully imported, or on the quays on which they have been lawfully landed; nor to the purchaſe of any rum whilſt it remains in the warehouſe, according to the act of 15 & 16 *G.* 2.; nor of any arrack, whilſt it remains in the warehouſes of the *Eaſt India* company; nor to the purchaſe of any prize foreign ſpirituous liquors; nor of any foreign ſpirituous liquors ſold for the benefit of the inſurers or proprietors to defray the charges of ſalvage. *ſ.* 19, 20.

And if any perſon, not being ſuch importer or dealer ſhall buy any of the ſaid goods (except as before excepted), not having the aforementioned words painted over his door; he ſhall forfeit 10 l.: And if the ſeller ſhall, within 20 days, and before any information hath been lodged againſt him, inform againſt the buyer, he ſhall be diſcharged from all penalties to which he might be liable for ſuch his own offence. *ſ.* 22.

Putting up thoſe words without making entry.

And if any perſon, other than ſuch as hath made entry as aforeſaid, ſhall paint over his door the words aforementioned, he ſhall forfeit 50 l. over and above the penalties for ſelling or dealing without entry. *ſ.* 21.

And

And no ſpirituous liquors ſhall be brought into any ſuch warehouſe or other place, without firſt giving notice to the officer of exciſe; and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expreſſing the quantity and quality, the name of the ſeller, and where the duties were paid, or the liquors condemned; on pain of forfeiting 20 l. and alſo the liquors and caſks. 9 *G.* 2. *c.* 23. *ſ.* 7.

Retailers to give notice of bringing in.

All dealers in foreign brandy or ſpirits, who ſhall receive into their cuſtody *Britiſh* ſpirits ſhall keep the ſame in ſeparate cellars, or other places, from their foreign brandy or ſpirits; on pain of 10 s for every gallon of *Britiſh* ſpirits found in the ſame place with the foreign ſpirits, together with the caſks in which the ſaid *Britiſh* ſpirits ſhall be found. 8 *G. c.* 18. *ſ.* 11.

Britiſh to be kept ſeparate from foreign ſpirits.

It ſhall be lawful for the officers of exciſe to take ſamples, not exceeding half a pint in the whole, out of each caſk or other package containing foreign ſpirituous liquors, in any ſhop, warehouſe, or other place, belonging to any dealer in the ſame; paying for ſuch ſample (if demanded) according to the market price liquor of the like quality ſhall be ſold for at the time of ſuch ſample taken. 32 *G.* 2. *c.* 29. *ſ.* 2.

Officers may take ſamples in the ſhop or warehouſe.

No retailer ſhall make any increaſe of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40 s. a gallon, and the liquors ſo mixed ſhall be ſeized and forfeited. 9 *G.* 2. *c.* 23. *ſ.* 8.

Retailer increaſing the liquor.

And if the officer of exciſe ſhall find any increaſe of *foreign* ſpirits, over and above the quantity which he found at any dealer's on the laſt ſurvey, ſuch increaſe ſhall be deemed to be made by foreign ſpirits for which no duty was paid; and ſo much as ſhall be found increaſed, ſhall together with the caſk be forfeited, unleſs the owner make it appear, that the increaſe was made by mixing therewith in the preſence of the officer of the diviſion, ſome of his ſtock of *Britiſh* ſpirits whereof the officer had taken an account, or by foreign ſpirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 *G. c.* 18. *ſ.* 12.

And by the 21 *G.* 3. *c.* 55. If the officer ſhall find any increaſe in the ſtock of any dealer in or ſeller of ſpirituous liquors, over and above the quantity which he found at his laſt ſurvey; ſuch increaſe, whether mixed or unmixed, ſhall be deemed to be made by a commodity for which no

duty has been paid. And so much of the stock as shall be found increased shall be forfeited, and a quantity equal to the increased quantity shall be seized by the officer and the person in whose stock such increase shall be found shall forfeit 20 l. *s.* 29.

Retailer concealing.

The officer at all times by day or night (but if in the night in presence of a constable, oath being first made before a justice dwelling near of a probable cause of suspecting a concealment) may enter into all such warehouses, shops, or other places, and by tasting, gauging, or otherwise, take an account of the quantity and quality; and if any such retailer shall hinder the officer, he shall forfeit 50 l. 9 *G.* 2. *c.* 23. *s.* 9.

None to be sold but in entered places.

And no such liquors shall be sold, but in such warehouse, shop, cellar, or other place so entred; on pain of 40 s. a gallon. 6 *G. c.* 21. *s.* 15.

And by the 11 *G. c.* 30. No *arrack*, whether *British* or foreign, shall be offered to sale, either by wholesale or retail, but in an entered place; on pain of forfeiting the same with the casks or other vessels, besides the said penalty of 40 s. a gallon. *s.* 3.

Retailers to have no share in distilleries, &c.

No licensed retailer shall be the owner or have any part or share in any distillery or rectifying house, or be concerned in the trade of a distiller or rectifier, on pain of 200 l. 26 *G.* 3. *c.* 73. *s.* 54.

To be under the jurisdiction of the magistrates.

And the justices of the peace, and other officers, shall have the same jurisdiction over such retailers of spirituous liquors as they have over alehouse keepers. 12 & 13 *W. c.* 11. *s.* 18. 2 *G.* 2. *c.* 28. *s.* 10.

Hawking in the streets.

No person shall hawk, sell, or expose to sale any spirituous liquors about the streets, highways, or fields, in any wheel-barrow or basket, or on the water in any boat, or in any other manner; or shall sell or expose the same to sale, on any bulk, stall, or shed, or any other place other than as above is allowed; on pain of 10 l. And one justice on his own view, or confession, or proof, of one witness, may convict him; whereupon he shall immediately pay the 10 l. to a churchwarden or overseer: And on refusal or neglect, the justice shall commit him to the house of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he shall not be discharged till he pay the sum, or till the two months be expired. If there is no informer, it shall be wholly to the use of the poor; otherwise half to the informer, and half to the poor. 9 *G.* 2. *c.* 23. *s.* 13.

And

And any one juſtice, on information on oath againſt ſuch perſon, may (without any previous ſummons) iſſue his warrant for apprehending and bringing him before ſome juſtice where the offence was committed. 11 *G.* 2. *c.* 26. *ſ.* 4.

And any perſon may ſeize and detain him, until he may give notice to the conſtable, churchwarden, overſeer, or other peace or pariſh officer; who ſhall carry the perſon ſo ſeized and detained, before a juſtice of the peace, who ſhall proceed thereon as in caſe where he is brought by the conſtable. 11 *G.* 2. *c.* 26. *ſ.* 5.

M. 13 *G.* 2. *K.* and *Croſts.* A woman was convicted for ſelling gin, and it appearing that ſhe was a feme covert, it was objected that ſhe could not be convicted; for as ſhe could make no contract, it muſt be taken to be her huſband's ſale; or if ſhe could be convicted, the huſband ought to have been joined for conformity. It was anſwered, that where the crime is of ſuch a nature, as can be committed by her alone, ſhe may be proſecuted without her huſband; which being a proceeding grounded merely on the breach of the law, he ſhall not be included, unleſs privy: In this caſe there may be impriſonment and being kept to hard labour. And by the court, We think the conviction is right; for this is not like the caſes that ſound only in damages. The wife may be convicted for recuſancy. And though ſhe cannot have the benefit of the contract, yet ſhe as well as the ſervant may do the act of vending. Beſides, there would be a plain way to evade the act, if femes covert could not be convicted. *Str.* 1121.

Occupier of the houſe ſhall be liable.

If any leſs quantity than two gallons ſhall be ſold or delivered in any clandeſtine manner, to any perſon, in any houſe, out-houſe, ſtable, barn, ſhed, or other place, part of or belonging to any houſe or farm; in ſuch caſe, the occupier or occupiers (if more than one) conſenting thereto, ſhall be deemed retailers, and forfeit as ſelling without licence. 11 *G.* 2. *c.* 26. *ſ.* 1.

Perſons giving away ſpirituous liquors.

Perſons giving away ſpirituous liquors to ſervants or apprentices fetching goods from their ſhops, ſhall be deemed retailers. 9 *G.* 2. *c.* 23. *ſ.* 16.

Paying wages in ſpirituous liquors.

If any maſter, or other perſon ſhall agree to pay any workman, ſervant, or labourer, or other perſon employed by him or for him, ſo much money for wages, and ſo much ſpirituous liquors, as together with the money ſhall amount to the value of the wages uſually paid in like caſes; or ſhall ſet off or deduct any part of the wages, for any ſpirituous liquors; he ſhall be deemed a retailer, and forfeit

feit 20 l. over and above the other penalties, and such servant shall be entitled to his whole wages. *s.* 11.

Apothecaries selling spirituous liquors.

But nothing herein shall extend to physicians or apothecaries selling the same as medicines. 9 *G.* 2. *c.* 23. *s.* 12. 16 *G.* 2. *c.* 8. *s.* 12.

Selling in gaols or workhouses.

No licence shall be granted for retailing of any spirituous liquors, within any gaol, prison, or house of correction, workhouse, or house of entertainment for parish poor; and if any keeper of such prison or house shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors or strong waters to be sold, used, lent, or given away in any such gaols or houses, or brought into the same, except such as shall be prescribed by the direction of a regular physician, surgeon, or apothecary from the shop of some regular apothecary, —— he shall forfeit 100 l. half to the king, and half (with full costs) to him who shall sue in the courts at *Westminster*. And if any such person shall offend again in like manner, and be a second time convicted; he shall forfeit his office. 24 *G.* 2. *c.* 40. *s.* 13.

And any justice, on information on oath that spirituous liquors or strong waters are kept and disposed of in any such prison or other place, may enter and search, or impower by warrant any constable to search for and seize all such liquors as shall be found (except such as are directed to be used medicinally) and to stave and destroy the same *s.* 14.

And if any person shall bring, or endeavour to bring any such liquors (except in the way of medicine as before mentioned) into any such gaol or other place, the gaoler or his servants may apprehend and carry such offender befor any justice of the peace, who shall hear and determine such offence in a summary way; and if by the oath of one witness, or otherwise, such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down such fine not exceeding 20 l. and not less than 10 l. as the justice shall impose, to be paid half to the informer, and half to the poor of such prison or workhouse. *s.* 15.

And the gaoler, keeper, master, or other officer, shall procure a copy of the three preceding clauses, to be printed or fairly written, and hung up in one of the most public places of his gaol, house of correction, or workhouse aforesaid, and renew the same from time to time, so that it be always kept fair and legible; on pain of 40 s. by warrant of one justice, on oath of one witness. And any justice

juſtice may enter and demand a ſight of it, and if it ſhall not be ſhewn to him hung up in ſome public place fair and legible; he ſhall immediately convict ſuch perſon, and ſo from time to time as often as he ſhall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of ſuch gaol or other place. *ſ.* 16.

Recovering debt for ſpirituous liquors;

No perſon ſhall recover any debt on account of ſpirituous liquors, unleſs it ſhall *bona fide* have been contracted at one time to the amount of 20 s. or upwards; nor ſhall any particular article in any account be allowed, where the liquors delivered at one time ſhall not amount to the full value of 20 s. and where no part of the liquors ſo ſold ſhall be agreed to be returned; and if any retailer, with or without a licence, ſhall take any pawn by way of ſecurity for payment of any money for ſuch liquors, he ſhall forfeit 40 s. by warrant of one juſtice, half to the poor, and half to the informer; and the owner ſhall have ſuch remedy for recovering ſuch pawn, as if it had never been pledged. *ſ.* 12.

or taking a pledge for ſecurity.

Diſtiller delivering to unlicenſed retailers.

If any diſtiller or other perſon ſhall knowingly ſell or deliver any diſtilled ſpirituous liquors, that the ſame may be unlawfully retailed or to any unlicenſed retailer; he ſhall forfeit 10 l. and treble the value of the liquors, half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*. And if any perſon guilty of retailing ſuch liquors, ſhall diſcover the diſtiller or perſon who knowingly ſupplied him therewith, and proſecute him to conviction, he ſhall be entitled to his ſhare of the penalty, and indemnified againſt all penalties incurred by him before that time, for ſelling ſpirituous liquors without licence. *ſ.* 11.

Riotouſly reſcuing offenders, or aſſaulting informers.

If any perſons to the number of five or more, ſhall in a tumultuous and riotous manner aſſemble to reſcue any offenders againſt any act relating to ſpirituous liquors, or for licenſing the retailers thereof, or to aſſault any perſon who ſhall have given or is about to give any information againſt, or ſhall have diſcovered or given evidence againſt, or ſhall ſeize or bring to juſtice any offender; he, his aiders and abettors, ſhall be guilty of felony, and tranſported for ſeven years. *ſ.* 28.

Selling without a permit, or pedlars with one.

If any perſon ſhall offer any ſpirituous liquors to ſale, not having a permit; or if any pedlar or other trading perſon, going from town to town, or other men's houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch liquors to ſale, although he have a permit: the perſon to whom they are offered

offered to sale, may seize and detain such liquors, and carry them to the next warehouse belonging to the customs or excise, and bring the person before a justice, to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such liquors may be prosecuted in the name of the person who stopped or seized the same, in like manner as if they had been seized by an officer. 9 *G.* 2. *c.* 35. *s.* 20.

Houses and places may be searched.

And by 24 *G.* 2. *c.* 40. The commissioners or one justice, on oath of any offence against this act, or any other act for regulating the retailing of spirituous liquors, may grant a warrant to any peace or parish officer, to enter and search the houses and other places, where the offence shall be sworn to have been committed, or in the occupation of the persons sworn to be guilty thereof, and they may break open the doors if not opened on demand, and seize all such distilled spirituous liquors as they shall there find, and detain the same, till the offence shall be heard and determined; and if the offender be convicted, the liquors shall be forthwith staved; and if he be not convicted, the same shall be restored. *s.* 6.

Officers neglecting to seize.

When any officer of the customs shall neglect to seize and prosecute any vessel, boat, horses, or other cattle or carriage, forfeited for running of brandy, and shall be convicted thereof on his appearance or default, by oath of one witness or confession; he shall forfeit 50 l. 6 *G.* 2. *c.* 17. *s.* 10.

Constables neglecting their duty.

If any constable, or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 *G.* 2. or 10 *G.* 2. herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20 l. 11 *G.* 2. *c.* 26. *s.* 7.

Power of the justices.

All the penalties not herein otherwise directed, shall be sued for and mitigated as by the laws of excise, or in the courts at *Westminster*; and be half to the king, and half to the informer or prosecutor. 24 *G.* 2. *c.* 40. *s.* 29. 26 *G.* 3. *c.* 37. *s.* 82. 27 *G.* 3. *c.* 13. *s.* 38. 30 *G.* 3. *c* 37. *s.* 7. 30 *G.* 3. *c.* 38. *s.* 9.

Reward where no penalty is levied.

And where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 5 l. to be paid to the informers. 17 *G.* 2. *c.* 17. *s.* 21.

Limitation of actions.

No informations shall be brought against a distiller, for any false or misentry, or offence, but within three months after the offence committed; and notice thereof shall be given

given to the party in writing, or left at his dwelling house, within a week after laying the information. 12 & 13 *W.* *c.* 11. *ſ.* 17.

Sale after condemnation.

And the commiſſioners ſhall cauſe all foreign exciſeable liquors, ſeized for non-payment of duty, or for being prohibited to be imported, to be publicly ſold, after condemnation, to the beſt bidder, at ſuch places as they ſhall think proper. 12 *G.* *c.* 28. *ſ.* 1.

Utenſils liable.

And all ſtills, worms, and ſtill heads, and other veſſels and utenſils for diſtilling, by whomſoever they ſhall be claimed, ſhall be liable to arrears. 7 & 8 *W.* *c.* 30. *ſ.* 13. 28 *G.* 3. *c.* 37. *ſ.* 21.

Conviction to be kept amongſt the records of the ſeſſions.

The juſtices within the limits of the head office of exciſe in *London*, ſhall once in every month tranſmit to the clerk of the peace, a certificate of all perſons convicted before them for any offences againſt this or any former act relating to ſpirituous liquors, or for licenſing the retailers thereof; who ſhall keep and enter the ſame among the records of the court: which certificate ſhall be evidence upon any information relating to ſpirituous liquors. 24 *G.* 2. *c.* 40. *ſ.* 21.

XVII. Starch, hair powder, and ſtone blue.

Duty on importation.

By 27 *G.* 3. *c.* 13. *Sched.* (A) for every hundred weight of *ſtarch* or *hair powder* imported, ſhall be paid a duty of - - - £. 5 s. 5 d. 8

Duty on home ſtarch.

And by the ſaid act, *Sched.* (F) for every pound of *ſtarch* of what kind ſoever made in *Great Britain*, ſhall be paid by the maker, a duty of - - - - - 0 0 3¼

Allowance if uſed in manufactures.

But there ſhall be an allowance made for every pound of *ſtarch* made and uſed in *Great Britain*, in preparing and finiſhing any manufactures from flax or cotton for ſale, (except ſuch as ſhall be uſed in finiſhing new linen in the piece for ſale,) - - - 0 0 1½

And if uſed in finiſhing new linen in the piece for ſale - - - - 0 0 3

Officers for theſe duties.

For the management of which duties on home ſtarch, the commiſſioners of the treaſury ſhall appoint commiſſioners, who ſhall ſubſtitute inferior officers. 10 *An.* *c.* 26. *ſ.* 9.

Who ſhall be a maker of ſtarch.

No perſon, within the limits of the head office of exciſe in *London*, ſhall be a maker of ſtarch, unleſs he occupies a tenement of 10l. a year or upwards, and for which he ſhall be aſſeſſed in his own name, and alſo pay

to

to the poor rates; and elsewhere, unless he pay to church and poor: and where there are no rates to church and poor, then to the rates on houses and windows; on the like penalties as for making starch without entry. 19 *G.* 3. *c.* 40. *s.* 3. 26 *G.* 3. *c.* 51. *s.* 20.

Starch-makers to be licensed.

And every *starch-maker* shall take out a licence for which he shall pay 5*l.* and shall renew the same annually, ten days at least before the end of the year; on pain of 30*l.* 24 *G.* 3. *c.* 41. *sess.* 2. *s.* 1. 7.

Persons in partnership.

But persons in partnership need only take out one licence for one house. *Id.*

Places of making to be entered.

And no maker of starch, shall erect, set up, alter, change, enlarge, or make use of, any workhouse, storehouse, room, or other place, for the making, drying, or keeping of starch; or for the keeping any flour or meal, or other materials, proper to be made into starch, or use any fat, trough, kiln, stove, box, utensil, or other vessel for the making of starch, without first giving notice in writing thereof, and of his name or place of abode, (unless such notice has been before given,) at the next office, for the said duties. And if such maker shall make default herein, he shall forfeit 200*l.* 24 *G.* 3. *c.* 48. *sess.* 2. *s.* 1.

Summoning offenders.

And a summons left at the place where discovery shall be made of such offence for not making entries, directed to the person prosecuted, by his right or assumed name; shall be as effectual as if delivered personally, and directed to him by his proper name. 5 *G.* 3. *c.* 43. *s.* 19.

Rooms and vessels to be numbered.

And all rooms and places, vessels and utensils, shall be marked and numbered, at the discretion of the surveyor or supervisor, at the expence of the maker, on the penalty of 50*l.* 19 *G.* 3. *c.* 40. *s.* 12.

And all flour, meal, and other materials, found in any private workhouse, or other place, and all private utensils, and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 *An.* *c.* 26. *s.* 22.

Names, &c. to be put up.

And every starch-maker shall cause his *name* to be painted in large letters, of at least three inches in length, and shall put the same over his door, or in some conspicuous part of the front of his house, with the addition of the word *starch maker*, on penalty of 100*l.* 24 *G.* 3. *c.* 48. *sess.* 2. *s.* 3.

Officers to enter and survey.

And the officer shall at all times, by day or night, and if in the night in presence of a constable, be permitted on request to enter the house, workhouse, warehouse, or other place used by any maker of starch; and by gauging

or weighing the ſtarch, and gauging the boxes and other utenſils, or otherwiſe, to take an account of the quantity; and thereof ſhall make return in writing to the commiſſioners, leaving a true copy, if demanded, under his hand, with the maker; and if he ſhall not leave ſuch copy (after demand in writing, 12 *G.* *c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. 10 *An.* *c.* 26. *ſ.* 14.

Notice of emptying the vats.

The maker before he begins to empty or waſh out any of the vats by him uſed in preparing or making of ſtarch, ſhall give to the officer 12 hours notice if within the bills, elſewhere 24 hours, of the particular time and hour when he intends to begin: and if he ſhall not begin at the hour, or within two hours after, the notice ſhall be void. And if he ſhall begin without giving ſuch notice, he ſhall forfeit 100 l. 19 *G.* 3. *c.* 40. *ſ.* 6.

And he ſhall (on the like pain) after he has begun to empty or waſh out ſuch vats, proceed and continue to empty or waſh out the ſame without leaving off, (except for one night,) and ſhall finiſh the ſame within 48 hours from the time of beginning. 26 *G.* 3. *c.* 51. *ſ.* 15.

And as ſoon as the vats ſhall be emptied, and the waters put into frames or tubs uſed for preparing and making the ſame into ſtarch, the ſaid waters ſhall remain therein undiſturbed for 48 hours at leaſt, and during that time the ſlimes and waſh ſhall not be taken off the ſame. 19 *G.* 3. *c.* 40. *ſ.* 7.

Mixing whilſt in operation.

And if the maker, whilſt the ſtarch is in operation, and under water, mix any of the ſtarch waters of one making, with thoſe of another making, although in the preſence of an officer, he ſhall forfeit 100 l.: But ſlimes which have been entered as ſuch, may be mixed in the preſence of an officer. 26 *G.* 3. *c.* 51. *ſ.* 18.

Notice of taking the waters out of the tubs.

When the maker ſhall be deſirous to take off from the four waters the ſlimes or waſh ſo put into the frames or tubs, after the ſame ſhall have remained undiſturbed for 48 hours, he ſhall give to the officer 12 hours notice within the bills, elſewhere 24 hours, of the particular time and hour when he intends to take off ſuch ſlimes and waſh. And if he ſhall not begin at the time, or within two hours after, the notice ſhall be void. And if he ſhall begin without giving ſuch notice, he ſhall forfeit 100 l. 19 *G.* 3. *c.* 40. *ſ.* 8.

And he ſhall (on the like pain) after he has begun to take off the ſlimes or waſh from the four waters, continue to ſhift the ſaid four waters until the whole is finiſhed, and

ſhall

ſhall finiſh the ſame within 12 hours from the time of beginning. 26 *G.* 3 *c.* 51. *ſ.* 15.

And when the taking off the ſlime and waſh from the four waters is finiſhed, and the green waters ſhall be put into the tubs for making into ſtarch, they ſhall remain undiſturbed for 24 hours; and that the officers may be able to aſcertain when the ſaid green waters were put into the tubs, every maker ſhall give notice in writing to the officer, of the time he finiſhed ſhifting ſuch four waters; on pain of 100 l. in either caſe. *ſ.* 16.

And when the ſlime ſhall be taken off as aforeſaid, and put into any tubs or other utenſils, the ſame ſhall remain in ſuch tubs or utenſils for 24 hours. And if the maker ſhall diſturb the ſame during the ſaid times of 48 hours and 24 hours reſpectively, he ſhall forfeit 100 l. 19 *G.* 3. *c.* 40. *ſ.* 9.

Boxing.

The maker ſhall uſe regular, ſquare, or oblong boxes only, for boxing and draining his green ſtarch, before it is dried in the ſtove, on pain of 10 l. 4 *G.* 2. *c.* 14. *ſ.* 1.

And he ſhall, if within the bills, give 12 hours, elſewhere 24 hours notice in writing to the officer, of his intention to put any green ſtarch into ſuch boxes: And he ſhall, in ſuch notice, expreſs the particular frame or tub from which he intends to box any ſtarch; and that, when he ſhall begin to box, he ſhall continue to proceed to box the ſame, till the whole quantity in ſuch frame or tub ſhall be boxed: And if he ſhall neglect to give ſuch notice, or ſhall not proceed or continue after ſuch notice given; he ſhall forfeit 200 l. 4 *G.* 2. *c.* 14. *ſ.* 1. 19 *G.* 3. *c.* 40. *ſ.* 11.

And if the charge be made by gauging it before it be dried in the ſtove, then every box of green ſtarch, or ſtarch before it be dried, containing 57 inches in length, and 10 inches in breadth, and eight inches in depth, or in the whole 4560 ſolid inches, ſhall be eſteemed 131 pounds avoirdupois of ſtarch dried and perfectly made. 1 *G. ſt.* 1. *c.* 2. *ſ.* 6.

And if the officer ſhall miſs any quantity of ſtarch, of which an account had been taken by gauge, whilſt the ſame was in the four waters or ſlimes, and before it hath been put into the boxes; he may charge the maker according to ſuch gauge taken. 19 *G.* 3. *c.* 40. *ſ.* 10.

Drying in the ſtove.

When the maker ſhall have broken the ſtarch from his boxes, he ſhall deliver to the officer an account in writing of the true number of pieces broken from ſuch box, diſtinguiſhing

tinguiſhing the ſize of the different pieces, under the denominations of large, middling, and ſmall; and how many pieces of each denomination are contained in each breaking from the boxes. And whenever he ſhall put his ſtarch, when ſcraped, or when put into the papers, into the ſtove for drying the ſame, he ſhall place the ſeveral pieces ſo put into the ſtove in ſuch manner, as that the officers may have acceſs to and be able to count the ſame. And he ſhall provide ladders, and aſſiſt the officer in taking an account of the ſaid ſeveral pieces in the ſtove; and he ſhall not, for two hours after the officer hath entered the ſtove, ſtir the fire under the ſtove, nor throw upon the pan of ſuch ſtove, any dirt, meal, or other ingredient, whereby a ſmoke may be raiſed, or the officer hindred in counting the pieces. And if he ſhall offend in any of the premiſes, he ſhall forfeit 200 l. *ſ.* 13, 14, 15.

Breaking down into ſcrapings.

And when the maker intends to break down any piece, into ſcrapings or otherwiſe, he ſhall give to the officer 12 hours notice, if within the bills, elſewhere 24 hours, of the particular time and hour when he intends to break down ſuch pieces: And if he ſhall not begin at the time, or within two hours after, the notice ſhall be void. And if he ſhall begin without giving ſuch notice, he ſhall forfeit 100 l. *ſ.* 16.

Removing from the ſtove.

And if he be deſirous to remove ſuch ſtarch from the ſtove; he ſhall give the like notice; and if he ſhall begin to remove any ſtarch from the ſtove after the ſame is dried, without giving ſuch notice, he ſhall forfeit 200 l. 26 *G.* 3. *c.* 51. *ſ.* 19.

And if the officer ſhall find in the ſtove any piece or pieces drying, of which no account had been taken in the box, the ſame ſhall be deemed ſtarch whereof no account had been taken; and the maker ſhall forfeit for every offence, 100 l. 19 *G.* 3. *c.* 40. *ſ.* 17.

To be papered and ſtamped.

And by 26 *G.* 3. *c.* 51. All ſtarch, before it be put into any ſtove or place to dry, (except for cruſting,) ſhall be put in papers, and the maker ſhall, before he begins papering ſuch ſtarch for drying, give to the officer 12 hours notice in writing if within the bills, elſewhere 24 hours, of the particular time and hour when he intends to begin, and ſhall in ſuch notice expreſs the number of pieces intended to be papered, and where intended to be dried: and if he ſhall not begin to paper ſuch ſtarch, at the time, or within one hour, ſuch notice ſhall be void. And every piece of ſtarch when papered, ſhall be tied up with ſtrings, paſted over with a piece of paper of a different colour, upon

which the officer shall put a stamp or seal, in such manner as to prevent opening such paper of starch without tearing the said piece of stamped paper: And every maker offending herein shall forfeit 100 l. *s.* 1, 2.

Forging or using forged stamps.

And if any person shall forge or counterfeit any such stamp, he shall be guilty of felony without benefit of clergy: Or shall knowingly sell any starch with such forged or counterfeit stamp, or affix any paper duly stamped to any piece of starch other than that which was originally inclosed therein; he shall forfeit 500 l. 26 *G.* 3. *c.* 51. *s.* 14.

Damaged stamps may be replaced.

And when the paper wherein such starch is contained shall be broken or damaged, and the maker shall be desirous of having the same repaired and restamped, he shall give, (if within the bills 12 hours, elsewhere 24 hours,) notice to the officer, who on being satisfied that it was damaged by accident, may restamp the same as before. *s.* 11.

Starch unstamped and scrapings.

And if any parcel of starch not papered and stamped in manner as aforesaid, or any scrapings or loose starch shall be found in any stove or place for drying, the same shall be forfeited; and the maker in whose possession the same is found, shall forfeit 200 l. But this shall not extend to pieces of starch put into the stove for crusting only before the same shall be scraped. *s.* 3.

And within one hour after such starch shall have been papered and stamped, all scrapings belonging thereto shall be weighed and put into water, and shall not be mixed with other articles, and when dissolved, shall be strained through a sieve, and the officer shall take an account thereof, as a green water; and the same shall not be again meddled with, until notice shall be given for boxing the same as required by 4 *G.* 2. *c.* 14. and 19 *G.* 3. *c.* 40. And if any maker shall neglect to put such scrapings under water, and stir the same until dissolved, and strain the same within one hour after having been weighed and taken account of; or shall wilfully disturb, or cause the same to be taken away without notice, he shall be deemed to have boxed starch without notice: Or if he shall, in order to increase the quantity of scrapings before the same be weighed, mix starch of the same or any other making, or any flour, meal, or other thing with such scrapings, or wilfully cause any water or other liquid to be put to such scrapings, or by any means cause the same to be increased in weight, he shall forfeit 200 l. *s.* 9, 10.

Maker to keep scales and weights.

And the maker shall keep just scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10 l. 10 *An.* *c.* 26. *s.* 16.

And

And by the 10 *G.* 3. *c.* 44. if he ſhall uſe inſufficient ſcales or weights, he ſhall forfeit 100l.: but not to be proſecuted both on this and the former act. And by the 28 *G.* 3. *c.* 73. *ſ.* 15. the ſame ſhall be forfeited and may be ſeized by any officer.

Removing before ſurveyed.

No maker of ſtarch ſhall remove any ſtarch of which no account hath been taken by the officer, from the place where it was made, without giving to the officer within the bills 24 hours notice, and elſewhere two days notice. 10 *An.* *c.* 26. *ſ.* 19.

And by 19 *G.* 3. *c.* 40. If he ſhall remove any ſtarch after it is dried, out of the ſtove or drying place, before it has been weighed and taken account of by the officers; he ſhall forfeit 200l. *ſ.* 19.

Removing upwards of 28 lb.

And no ſtarch exceeding 28 lb. ſhall be removed or carried by land or water, unleſs the word *ſtarch* be legibly marked on the package, in letters three inches long, on forfeiture thereof, together with the cheſts, caſks, or other package containing the ſame; and the boats or veſſels, horſes, carts, or other carriages made uſe of in removing thereof. 24 *G.* 3. *c.* 48. *ſeſſ.* 2. *ſ.* 4.

Dealers receiving above 28 lb.

And if any dealer in ſtarch ſhall receive more than 28 lb. of ſtarch not marked as aforeſaid, he ſhall forfeit 200l. *Id.* *ſ.* 5.

Looſe ſtarch above 28 lb. and ſcrapings may be ſeized.

And all ſtarch not being papered and ſtamped as before directed, and all looſe ſtarch exceeding 28 lb. and ſcrapings of ſtarch, which ſhall be found in the poſſeſſion of any maker of (or *dealer* in, 27 *G.* 3. *c.* 31. *ſ.* 23.) ſtarch, or any perſon for his uſe, or ſhall be found removing by land or water; ſhall be forfeited, and may be ſeized by any officer of the ſaid duties; together with the package containing the ſame, and the boat or veſſel, horſes, carts, or other carriages made uſe of in removing thereof, and ſuch perſon ſhall forfeit moreover 10s. for every pound. But not to extend to ſtarch made into hair powder, or to any quantity taken out of the papers in the poſſeſſion of any hair powder maker, or blue maker, or to any quantity not exceeding 28 lb. in the poſſeſſion of any dealer in ſtarch; nor to the returns from the ſieves that may be in the poſſeſſion of any maker of hair powder. 26 *G.* 3. *c.* 51. *ſ.* 13.

Concealing or privately making.

If any officer of the duties upon ſtarch or of the cuſtoms, ſhall have any cauſe to ſuſpect that ſtarch is privately making in any place or concealed; then upon oath made before any commiſſioner or juſtice reſiding near, ſetting forth the ground of his ſuſpicion, ſuch commiſ-

sioner or justice may issue his warrant, to authorize such officer by day or night, (but if in the night, in presence of a constable,) to enter such suspected place, and seize and carry away the same, with the materials, as forfeited, together with the boxes and other things containing it: and unless the party make it appear that the duty has been paid, he shall forfeit 50 l.; and if any person obstruct the officer, he shall forfeit 100 l. 4 *G.* 2. *c.* 14. *s.* 4. 23 *G.* 2. *c.* 21. *s.* 34.

And by the 19 *G.* 3. *c.* 40. If the maker shall conceal any starch with intent to deceive his majesty of the duties, he shall forfeit 100 l. *s.* 20.

Assisting in private or unentered places.

And if any person shall knowingly assist in making starch in any private or unentered place, or shall be any ways concerned in carrying on such private making of starch; every person so offending shall forfeit 30 l. And any officer of excise may arrest and convey him before a justice, who on confession, or proof on oath of one witness, may convict such offender, who shall immediately pay the said penalty, and on his refusing or neglecting to pay the same, he shall be committed to the house of correction for six months, to be reckoned from the day of conviction, unless the penalty shall be sooner paid. And on conviction for a second offence, he shall forfeit 60 l. and on non-payment shall be committed in like manner for one year, unless the same be sooner paid. 24 *G.* 3. *c.* 48. *sess.* 2. *s.* 2.

Officer to charge for materials missing.

The officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not, on reasonable demand, receive satisfaction what is become thereof, he may charge the maker with such quantity of starch, as such materials so missing in his judgment would reasonably have made, not exceeding 25 pounds weight of starch, for every bushel of such ingredients mixed or unmixed. 10 *An.* *c.* 26. *s.* 17.

And if any officer shall miss any starch, or materials for making thereof, of which a gauge had been taken while in the green water or slimes, and before put into the boxes, and shall not receive satisfaction what is become of the same, he shall charge the maker according to the gauge so taken, and such maker shall pay the duty so charged. 26 *G.* 3. *c.* 51. *s.* 17.

The

The maker ſhall keep all ſtarch by him made and not ſurveyed, ſeparate from other ſtarch which hath been ſurveyed for 24 hours after making within the bills, and for two days elſewhere, unleſs it ſhall be ſooner ſurveyed; on pain of 5 l. 10 *An.* *c.* 26. *ſ.* 20. Starch unſurveyed to be kept ſeparate.

The maker ſhall weekly make entry in writing at the next office, of all the ſtarch by him made within each week, ſetting forth the weight, and how much was made at each time; on pain of 50 l. Which entry ſhall be on oath of the maker, or his chief workman, according to the beſt of his knowledge and belief, before ſuch officer as ſhall be appointed by the commiſſioners within the bills, and elſewhere before the collector and ſupervisor. *Id.* *ſ.* 11. 19 *G.* 3. *c.* 40. *ſ.* 3. Entry of ſtarch made.

But he ſhall not be obliged to go further, either to make entry or payment, than to the next market town. 19 *G.* 3. *c.* 40. *ſ.* 5.

And ſuch maker ſhall, within one week after ſuch entry, clear off the duties; on pain of double duty: And no maker, after default in payment, ſhall ſell or deliver out any ſtarch until he hath cleared off the duty; on pain of double value. 10 *An.* *c.* 26. *ſ.* 13. Payment of the duties.

Cocquets granted for ſhipping ſtarch, to be landed in any other part of the kingdom, ſhall expreſs the quality, quantity, and weight, the mark of the package, and by whom made and ſold, and where conſigned; and if ſhipped without ſuch cocquet, it ſhall be forfeited and ſeized, together with the package. 23 *G.* 2. *c.* 21. *ſ.* 29. Carrying it coaſtwiſe.

No ſtarch ſhall be *imported* otherwiſe than in ſome package, containing at leaſt 224 pounds of neat ſtarch, and ſtowed openly in the hold; on pain of being ſeized and forfeited, together with the package, and the maſter of the veſſel to forfeit 50 l. *ſ.* 27. Importation and exportation.

But on information brought againſt ſuch maſter, he may detain the wages of the mariners, till it be determined; and if it ſhall appear that the ſtarch was put on board by any mariner without the maſter's knowledge, the maſter may apply the wages of ſuch mariner in payment of the forfeiture. 26 *G.* 2. *c.* 32. *ſ.* 8.

And the officers of exciſe (in like manner as the officers of the cuſtoms) may go on board any veſſel, and ſearch for and ſeize all ſtarch forfeited, together with the package; and they may likewiſe ſeize ſuch as, before entry and payment of duties, ſhall be found unſhipping or unſhipped. 23 *G.* 2. *c.* 21. *ſ.* 28.

Starch that hath paid the duties may be *exported*; and the duties ſhall be drawn back. 10 *An. c.* 26. *ſ.* 25, 26, 27. 27 *G.* 3. *c.* 13.

And every perſon who ſhall intend to export any ſtarch upon which all the duties have been paid, and ſhall have given notice of packing up the ſame as directed by 25 *G.* 3. *c.* 74. the officer who ſhall attend to ſee the ſaid ſtarch packed up, ſhall mark every paper of ſtarch, on a lable or piece of paper to be affixed thereto, with the word *exportation*, but the ſame ſhall not be permitted to be packed up or exported, unleſs it ſhall have the piece of paper ſtamped, as by this act directed, intire and unbroken. And if any ſtarch ſo marked for exportation, ſhall be found upon land, (except where packed up before ſhipped, or in removing from thence to be put on board,) the ſame ſhall be forfeited, and may be ſeized by any officer of exciſe or cuſtoms. 26 *G.* 3. *c.* 51. *ſ.* 6, 7, 8.

And the officers of exciſe or cuſtoms may ſeize any ſtarch or hair powder, with the horſes and package, where they have good reaſon to ſuſpect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and ſhall in ten days exhibit an information before three commiſſioners of exciſe, or two juſtices near where the ſeizure is made; and if the party doth not make it appear that the duty hath been paid, it ſhall be forfeited, together with the horſes and package; and the offender ſhall likewiſe forfeit 5*l.* for every hundred weight. 4 *G.* 2. *c.* 14. *ſ.* 3.

And by the 23 *G.* 2. *c.* 21. it is enacted, that the ſaid officers may ſeize any ſtarch, with the package, that ſhall be found in any veſſel, cart, or other carriage, where they ſhall have good reaſon to believe that the ſame was made in ſome private workhouſe, or clandeſtinely imported, or relanded after drawback, and if the party at the hearing of the information, ſhall not make it appear that the duty hath been paid or ſecured, he ſhall forfeit 5*l.* for every 100 pounds weight, and alſo the goods and package ſhall be forfeited. *ſ.* 30.

And if any foreign ſtarch ſhall be unſhipped, with intention to be laid on land before entry and payment of the duties, or ſhall be landed again after ſhipping for exportation on debenture; the ſame, together with the package, veſſels, boats, horſes, and other carriages, uſed in landing or conveying the ſame, ſhall be forfeited, and may be ſeized by any officers of the cuſtoms or exciſe; and the perſons from whom the ſame ſhall be ſeized, ſhall forfeit 5*l.* for every hundred weight. *ſ.* 31. And

And if any person shall knowingly harbour or conceal any starch unlawfully imported, or re-landed after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 l. for every hundred weight, together with the goods and package. *s.* 32.

And where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then public notice shall be given by proclamation, at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to appeal, nor be removed by certiorari. *s.* 33.

Making of hair powder.

No perfumer, peruke maker, barber, or dealer in *hair powder*, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talke, plaister of Paris, whiting, lime, or other thing of the like nature (sweet scents only excepted); on pain of forfeiting the same and 50 l. 12 *An. st.* 2. *c.* 9. *s.* 20.

And by the 4 *G.* 2. *c.* 14. If any maker of *hair powder*, or other such person, shall mix any powder of alabaster, plaister of Paris, talke, chalk, whiting, lime, or any other material, (rice first made into starch, and sweet scents only excepted,) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any the said materials, or any other materials except starch or powder of starch, or of rice first made into starch, and shall use, sell, or offer to sell any hair powder so mixed or made; he shall forfeit the same, and 20 l. *s.* 5.

Places of making hair powder to be entered.

Every maker of *hair powder* shall make entry in writing at the next excise office of his place of abode, and of his workhouse or other place made use of for making hair powder; on pain of 20 l. 4 *G.* 2. *c.* 14. *s.* 6.

Officer to enter the same and survey.

And the officer, in the day time, on his request, may enter places used for making *hair powder*, and the shops of perfumers, peruke makers, barbers, and other sellers or dealers in hair powder, and examine the same, and carry away samples, paying a reasonable price for the same. *s.* 7.

And if ſuch ſtarch maker, or dealer, ſhall not on requeſt ſuffer him to enter, and examine, and take ſamples (on offering to pay the common price); he ſhall forfeit 20l. *Id. ſ.* 9.

Perſon having in his poſſeſſion materials for adulterating hair powder.

And if any ſtarch maker, or dealer in hair powder, ſhall have in his poſſeſſion, for making, mixing, or counterfeiting hair powder, any alabaſter, plaiſter of Paris, talke, chalk, whiting, lime, or other material, beſides ſtarch, or powder of ſtarch, or of rice firſt made into ſtarch; he ſhall forfeit the ſame, and 10l. *ſ.* 8.

Making of ſtone blue.

Every perſon who ſhall be maker of *ſtone blue* for ſale, ſhall make an entry in writing at the next exciſe office, of his name and place of abode, together with the workſhop or place that ſhall be made uſe of in making or keeping ſtone blue, or materials for making thereof, on the penalty of 50l. 26 *G.* 3. *c.* 51. *ſ.* 21.

And any officer by day, may enter ſuch workſhop or place, and examine every parcel of ſtone blue, and take ſamples thereof, paying for the ſame: and if any perſon ſhall refuſe to permit him to enter ſuch place, or hinder him in taking ſuch ſamples: or ſhall moleſt or hinder any officer in the execution of this act, he ſhall forfeit 50l. *ſ.* 22. 25, 26.

And no maker ſhall begin to make any ſtone blue for ſale, from any flour, meal, or other ingredients (other than for colouring the ſame) except ſtarch for which the duties have been paid, on pain of forfeiting thereof, (except ſuch colouring,) together with the boxes, tubs, &c. containing the ſame, and alſo 100l. *ſ.* 23.

No ſtarch to be received by ſtone blue makers but in ſtamped papers.

And if any maker of ſtone blue or hair powder for ſale, ſhall receive into his poſſeſſion any ſtarch, in papers not ſtamped, or any looſe ſtarch or ſcrapings, he ſhall forfeit 10s. a pound; and moreover the ſame ſhall be forfeited, and may be ſeized by any officer. And if any maker ſhall keep above 28lb. of ſtarch or hair powder in any unentered place, the ſame ſhall be forfeited, and alſo 50l. *ſ.* 24.

Power of the juſtices.

All the ſaid forfeitures ſhall be ſued for, levied, and mitigated, as by the laws of exciſe (*a*), or in the courts at *Weſtminſter*; and be diſtributed half to the king, and half (and on the 10 *An. c.* 26. half with full coſts) to the pro-

---

(*a*) There is a particular method directed for levying the penalties impoſed by 23 *G.* 3. *c.* 21. which being the ſame as for *Candles*, ſee the title **Exciſe** (*Candles*).

ſecutor.

ſecutor. 10 *An.* *c.* 26. *ſ.* 29. 24 *G.* 2. *c.* 40. *ſ.* 29. 19 *G* 3. *c.* 40. *ſ.* 22. 24 *G.* 3. *c.* 48. *ſ.* 16. 26 *G.* 3. *c.* 51. *ſ.* 26.

Obſtructing officer.

And if the maker ſhall obſtruct ſuch officer in the execution of his duty, he ſhall forfeit 100*l.* 24 *G.* 3. *c.* 48. *ſ.* 6.

Proof to lie on the claimer.

And where any ſtarch ſhall be ſeized for non-payment of duties, or non-entry, and it ſhall be diſputed whether ſuch payment or entry were made or not; the proof ſhall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *ſ.* 34.

Appeal.

And if the party is not ſatisfied with any judgment of the juſtices, on the act of 23 *G.* 2. *c.* 21. above-mentioned, he may appeal to the next quarter ſeſſions (except in the caſe before mentioned, where no perſon ſhall claim the goods ſeized). *ſ.* 36.

Mitigation.

And the mitigation on the ſaid act of 23 *G.* 2. ſhall not reduce the penalty to leſs than a fourth part, over and above the charges. *ſ.* 37.

Utenſils liable.

And all ſtarch materials, and utenſils, in cuſtody of the maker, or of any perſon to his uſe, ſhall be liable to all arrears of the duty, and penalties; and ſuch proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 *An.* *c.* 26. *ſ.* 23. 28 *G.* 3. *c.* 37. *ſ.* 21.

XVIII. Sweets.

Licence for making ſweets.

Every maker of any kind of ſweets for ſale, other than mead, ſhall take out a licence, for which he ſhall pay 5*l.* and ſhall renew the ſame annually, ten days at leaſt before the end of the year: on pain of 30*l.* 24 *G.* 3. *c.* 41. *ſeſſ.* 2. *ſ.* 1. 7.

But perſons in partnerſhip need only take out one licence for one houſe. *Id.*

Who ſhall be deemed a maker.

And every perſon who ſhall ſell or uſe any materials uſed in the making of wines, and in whoſe cuſtody 2 gallons ſhall be found, ſhall be deemed a maker of ſweets for ſale. 10 & 11 *W.* *c.* 21. *ſ.* 5.

Duty on ſweets.

And by the 27 *G.* 3. *c.* 13. *Sched.* (F) For every barrel of liquor which ſhall be made in *Great Britain* for ſale, by infuſion, fermentation, or otherwiſe, from fruit or ſugar, or fruit and ſugar mixed with any other ingredients, commonly called *ſweets* or *made wines*, and ſo in proportion for

for a greater or less quantity, shall be paid by the maker a duty of - - £. 0 18 $4\frac{3}{4}$

And by 35 G. 3. c. 10. s. 1.
a further duty of - - 0 11 $7\frac{1}{4}$

And by 36 G. 3. c. 123. s. 1.
a further duty of - - 0 12 0

£. 2 2 0

Licence for retailing.

And by the 30 G. 3. c. 38. Every retailer of sweets or *British* made wines, shall take out a licence from the officers of excise, for which he shall pay 2 l. 4 s. Which licence shall continue in force until and upon the 10th day of *October* next ensuing the granting thereof and no longer: Provided nevertheless, that where such licence shall be first granted between the 5th of *April* and the 10th of *October* in any year, there shall be charged only a rateable proportion of the money aforesaid, according to the time for which such licence shall be granted. s. 6, 7, 8.

Penalty.

And every person who shall retail any *British* made wines or sweets without such licence, shall forfeit 50 l. s. 9.

To be renewed annually.

And the same shall be renewed annually ten days at least before the expiration of the former licence, on the like penalty. *Id.*

Who only to be licensed.

But no licence shall be granted by virtue of this act, to any other than such persons only as might have licences before the passing thereof. s. 14.

And after 10th of *October* 1792, no person by virtue of any licence from the officers of excise for the sale of *British* made wines or sweets, shall sell the same by retail to be drank in his own house, or place thereto adjoining or belonging; except a licence shall have been granted to him by the justices to sell ale and beer in the same house. And the justices shall have the same jurisdiction, power, and authority over such retailers of *British* made wines or sweets, as they now have over alehouse keepers. 28 G. 3. c. 37. s. 32. 32 G. 3. c. 59. s. 9.

And if any person shall sell by retail to be drank as aforesaid, any such *British* made wines or sweets without having such ale licence as aforesaid; he shall forfeit the like penalties as persons selling ale without licence are subject to by 5 G. 3. c. 46. The same to be recovered and applied, as by that, or any other act relating thereto is directed. *Id.*

Licensed persons dying or removing.

And on the death or removal of any such licensed person the officers of excise may authorize the executors or admini-

adminiſtrators, wife or child of ſuch deceaſed perſon, or the aſſigns of ſuch perſon ſo removing, to carry on ſuch trade the remainder of the year. 30 *G.* 3. *c.* 38. *ſ.* 10.

Perſons in partnerſhip need not take out more than one licence for one houſe or place. But ſuch licence ſhall not extend to any other houſe or place than ſuch as ſhall be entered. *Id.*

Perſons in partnerſhip.

But no licence ſhall authorize any perſon to ſell *Britiſh* made wines or ſweets in any other than ſuch houſe, ſhop, or place in which he ſhall retail the ſame at the time of granting ſuch licence, and an entry thereof in writing ſhall be made at the exciſe office in the name of ſuch perſon at the time of granting ſuch licence. *Id.*

Houſe or place to be entered.

And every perſon who ſhall ſell or expoſe to ſale any *Britiſh* made wines or ſweets in the quantity of 25 gallons or under, ſhall be deemed a retailer within the meaning of this act. *ſ.* 15.

Who ſhall be deemed a retailer.

And by 26 *G.* 3. *c.* 74. *ſ.* 7. Every ſuch licenſed retailer ſhall cauſe the words *Dealer in Britiſh Wine* to be written or painted in legible characters, and to be hung out on a ſign, or put up in ſome conſpicuous place in the front of his houſe, on pain of forfeiting 10 l. *ſ.* 7.

Certain words to be put up.

And every maker of *ſweets* for ſale, ſhall firſt give notice to the exciſe officers, of his name and place of abode, and of the rooms and places he intends to uſe for making or keeping of ſweets, or made wines; on pain of 20 l. 10 *G.* 2. *c.* 17. *ſ.* 4.

Notice to be given.

And if any maker of *ſweets* for ſale, ſhall conceal any ſweets from the view of the gauger, he ſhall for every barrel, forfeit 40 s. 7 & 8 *W.* *c.* 30. *ſ.* 16.

Concealing ſweets.

If any *ſweets*, having paid the duty, ſhall be intended to be removed, the exciſe officer ſhall on requeſt give a certificate under his hand, expreſſing the quantity and quality, and from whom and to whom they are to be ſent; and if any maker ſhall other wiſe remove them, or vintner receive them, he ſhall forfeit 10 s. a gallon, and alſo the liquor and caſks. 6 *G.* *c.* 21. *ſ.* 22.

Permit for removal after duty paid.

All penalties and forfeitures are to be ſued for, recovered, and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and to go half to the king, and half to him who ſhall ſue. 24 *G.* 3. *c.* 41. *ſ.* 11. 30 *G.* 3. *c.* 38. *ſ.* 16.

Penalties.

XIX. Tobacco and snuff.

[*N. B.* The act of 29 *G.* 3. *c.* 68. regulating the importation, exportation, and manufacture, of tobacco and snuff, being of great length; it is thought sufficient in this place to give a short account thereof only; and also of the act of 30 *G.* 3. *c.* 40. made to explain and amend the same; and for further information to those whom it may materially concern, to refer them to the acts themselves.]

By which act of 29 *G.* 3. *c.* 68. *s.* 1, 2. 171. the 20 *G.* 2. *c.* 13.—24 *G.* 2. *c.* 41.—23 *G.* 3. *c.* 11.—25 *G.* 3. *c.* 81.—and 26 *G.* 3. *c.* 52. and also the duties imposed by 27 *G.* 3. *c.* 13. are repealed. And the following duties are granted in lieu thereof.

	Customs.		Excise.		Tot. Ex.	
Duty on importation. For every pound of *Spanish* or *Portuguese* tobacco imported -	*s.* 1	*d.* 6	*s.* 2	*d.* 0		
By 36 *G.* 3. *c.* 13. *s.* 1. more	0	0	1	0		
					3	0
And when delivered from the warehouse for exportation, a further sum of - - - -	0	1	0	2		
By 36 *G.* 3. *c.* 13. *s.* 1. more	0	0	0	1		
					0	3
Which said duty of 1d. and 2d. is by 30 *G.* 3. *c.* 4. *s.* 1. declared to be the only duty which was then payable on exportation thereof.						
For every pound of *Irish* or *American* tobacco imported -	0	6	0	9		
By 36 *G.* 3. *c.* 13. *s.* 1. more	0	0	0	4		
					1	1
Snuff imported. For every pound of snuff imported by the *East India* company	1	3	2	0		
By 36 *G.* 3. *c.* 13. *s.* 1. more	0	0	1	0		
					3	0
For every pound of snuff imported from *British America*, or the *Spanish West Indies* -	0	6	1	0		
By 36 *G.* 3. *c.* 13. *s.* 1. more	0	0	0	6		
					1	6
And from any other place -	0	10	1	4		
By 36 *G.* 3. *c.* 13. *s.* 1. more	0	0	0	7		
					1	11

And

And certain drawbacks are allowed upon the exportation thereof.

Which duties are to be under the management of the commissioners of the customs and excise. 29 *G.* 3. *c.* 68. *s.* 4. 36 *G.* 3. *c.* 13. *s.* 2.

And no tobacco shall be imported but from *America*, on forfeiture thereof, with the vessel and her contents: except from *Spain*, *Portugal*, and *Ireland*, from which places it may be imported, under certain regulations. 29 *G.* 3. *c.* 68. *s.* 5, 6.

But no tobacco or snuff shall be imported in any vessel of less burthen than 120 tons; nor any tobacco stalks, tobacco stalk flour, or snuff work, in any vessel whatever; nor any tobacco or snuff in casks less than 450lb. on the like penalty; except loose tobacco for the crew, not exceeding 5 lb. for each person; nor shall the vessel be forfeited, if proof be made from the smallness of the quantity, that such tobacco or snuff was on board without the knowledge of the owner or master. *Id.* *s.* 7, 8, 9, 10, 11.

And no tobacco or snuff shall be imported except at *London*, *Bristol*, *Liverpool*, *Lancaster*, *Cowes*, *Falmouth*, *Whitehaven*, and *Hull*; [and by 31 *G.* 3. *c.* 47. *s.* 3. *Newcastle upon Tyne*,] on the like forfeiture. *s.* 14.

Manufacturers to be licensed.

And every *manufacturer* of tobacco or snuff shall take out a licence from the officers of excise, for which he shall pay, if the quantity of tobacco and snuff work weighed by him for manufacture within the year ending the 10th of *October* previous to his taking out such licence, did not

exceed	-	-	20,000 lb.	£. 2	0	0
If above 20,000 and did not exceed			30,000	3	0	0
Ditto	30,000	-	- 40,000	4	0	0
Ditto	40,000	-	- 50,000	5	0	0
Ditto	50,000	-	- 60,000	6	0	0
Ditto	60,000	-	- 70,000	7	0	0
Ditto	70,000	-	- 80,000	8	0	0
Ditto	80,000	-	- 90,000	9	0	0
Ditto	90,000	-	- 100,000	10	0	0
Ditto	100,000	-	- 120,000	12	0	0
Ditto	120,000	-	- 150,000	15	0	0
Ditto	150,000	-	- -	20	0	0

Dealers to be licensed.

And every *dealer* in tobacco and snuff shall take out a licence in like manner, for which he shall pay, within the liberties of the chief office in *London*, 5s. elsewhere 2s. 6d. *s.* 70.

Exception. But perſons licenſed as manufactures, who ſhall not ſell tobacco in a leſs quantity than 4 lb. nor ſnuff in 2 lb. need not be licenſed as dealers. *ſ.* 73.

Penalty. And every perſon who ſhall manufacture or deal in tobacco or ſnuff without taking out ſuch licence; or ſhall not renew the ſame ten days at leaſt before the end of the year, ſhall forfeit, if a manufacturer, 200 l. and if a dealer 50 l. *ſ.* 72.

But no perſon ſhall be liable to the ſaid penalty of 50 l. for ſelling unmanufactured tobacco or ſnuff whilſt remaining in the king's warehouſe. *ſ.* 75.

Perſons in partnerſhip. But perſons in partnerſhip need not take out more than one licence for one houſe. *ſ.* 74.

Who ſhall be deemed manufacturers, and who dealers. Every perſon who ſhall manufacture tobacco, tobacco-ſtalks, or returns of tobacco, or flatten any tobacco-ſtalks, or cut the ſame into *Spaniſh*; ſhall be deemed a *manufacturer of tobacco*. And every perſon who ſhall grind or manufacture any tobacco-ſtalk flour, ſnuff work, or ſnuff, ſhall be deemed a *manufacturer of ſnuff*. And every perſon who ſhall ſell any tobacco, tobacco-ſtalks, or returns of tobacco, or ſtalks flattened or cut into *Spaniſh*; ſhall be deemed a *dealer in tobacco*. And every perſon who ſhall ſell any tobacco-ſtalk flour, ſnuff work, or ſnuff, ſhall be deemed a *dealer in ſnuff*, within the meaning of this act. *ſ.* 155.

Entry to be made. And every manufacturer and dealer ſhall make entry in writing of his houſe or place intended to be made uſe of for manufacturing, keeping, and ſelling tobacco or ſnuff, 3 days before he ſhall begin; on pain of forfeiting 200 l. and alſo the tobacco and ſnuff there found, together with the caſks and package, which may be ſeized by the officers of the cuſtoms or exciſe. *ſ.* 59.

And where entry ſhall be made of any houſe or place for manufacturing, keeping, or ſelling tobacco or ſnuff; no other entry ſhall be made by any other perſon (except partners) of any place under the ſame roof, or within the ſame houſe or tenement; on the like penalty. *ſ.* 60.

But no ſuch entry ſhall be valid, unleſs the perſon making the ſame, within the limits of the head office, be an occupier of a tenement of 10 l. a year, and pay to the pariſh rates; elſewhere, unleſs he pay to the church and poor. *ſ.* 61.

And every ſuch manufacturer ſhall 3 days before he begins, make entry in writing at the exciſe-office, of all mills, preſſes, engines, rollers, ſtoves, mullers, or ſpinning-

wheels, intended to be uſed by him about the manufacturing of tobacco or ſnuff; on pain of forfeiting 50 l. for every ſuch utenſil not entered. *ſ.* 69.

And every ſuch manufacturer and dealer ſhall cauſe to be put up in large legible characters over his door, or on ſome conſpicuous part of ſuch houſe or place, the words *Manufacturer of, and Dealer in Tobacco and Snuff*, or *Tobacco* or *Snuff*, or *Manufacturer of*, or *Dealer in Tobacco and Snuff*, or *Tobacco* or *Snuff* (as the caſe may be); on the penalty of 50 l. *ſ.* 62. Certain words to be put up.

And if any perſon who has not made ſuch entry as aforeſaid, ſhall put up the ſaid words, he ſhall forfeit 100 l. *ſ.* 63.

And by 30 *G.* 3. *c.* 40. No perſon ſhall ſet up or begin any manufactory of tobacco or ſnuff within 5 miles of the ſea coaſt, except in the ports and places aforeſaid where tobacco may be imported, or places within 3 miles thereof; or in cities, or the ſuburbs thereof; and market towns; and no entry thereof ſhall be of any avail. But the ſame ſhall not extend to places duly entered before 5th *July* 1789. *ſ.* 8. Where only manufactories may be ſet up.

But tobacco and ſnuff may be manufactured by any unlicenſed *Spaniſh* cutter or ſnuff miller, at any entered mill, on account of any licenſed manufacturer, provided the ſame be legally permitted from ſuch manufacturer, and for the ſole purpoſe of manufacturing or grinding. 29 *G.* 3. *c.* 68. *ſ.* 76. May be manufactured at entered mills, by unlicenſed perſons.

And every manufacturer ſhall give notice in writing to the officers (if in *London* 6, in cities and market towns 12, and elſewhere 24 hours) before he ſhall begin to ſtrip, ſpin, or preſs any tobacco for cutting; or make any tobacco into carrots, or flatten any ſtalks for *Spaniſh*; and ſhall expreſs therein the weight of each article, and the time he intends to begin; and the officer ſhall attend accordingly, and he ſhall begin within one hour of the time ſo mentioned, and ſhall proceed without delay; and ſhall afterwards deliver a declaration in writing to ſuch officer, of the quantity intended to be uſed for each ſort of tobacco; on the penalty of 20 l. and ſuch notice ſhall be void. *ſ.* 77. 95.—30 *G.* 3. *c.* 40. *ſ.* 30. Notice to be given of beginning to work.

Provided, that if ſuch tobacco ſhall afterwards appear to be unfit for the purpoſe ſpecified in ſuch declaration, it may be applied to any other purpoſe, on giving 48 hours notice to the officer of the ſort it is intended for. 29 *G.* 3. *c.* 68. *ſ.* 78, 79. Tobacco not fit for the purpoſe intended.

And

Weights, &c. of each ſort to be declared after manufacturing.

And ſuch manufacturer, as ſoon as the manufacturing is finiſhed, ſhall deliver to the officer a declaration of the weight of the different ſorts of tobacco ſo manufactured, and the number of the rolls or carrots made, and the weight thereof, and of the tabacco-ſtalks and returns ariſing from the operation; and ſhall keep each ſort ſeparate for 24 hours, or until an account be taken; on the penalty of 50l. *Id. ſ.* 80, 81, 82.

Tobacco for exportation to have no ſtalks in.

And if any manufacturer ſhall make, or have in his poſſeſſion, any roll or carrot-tobacco for exportation, which ſhall have any tobacco-ſtalks therein, the ſame ſhall be forfeited, and may be ſeized, and he ſhall alſo forfeit 50l. *Id. ſ.* 83.

No perſon to cut leaves, &c. in imitation of tobacco.

And every perſon who ſhall cut any walnut-tree, or other leaves, herbs, or plants, in imitation of tobacco (not being tobacco leaves or plants); or ſhall colour the ſame ſo as to reſemble tobacco; or ſhall mix any ſuch leaves, herbs, or plants with tobacco; or ſhall ſell, or expoſe to ſale, or have in his poſſeſſion, any ſuch leaves, herbs, or plants ſo cut, coloured, or mixed, he ſhall forfeit the ſame with the caſks and package, which may be ſeized; and alſo 200l. *Id. ſ.* 84.

Manufacturers may keep and uſe dye.

Provided, that nothing herein ſhall extend to prohibit any ſuch manufacturer from dying tobacco, or for having ſuch dye in his poſſeſſion for that purpoſe. *Id. ſ.* 85. 30 *G.* 3. *c.* 40. *ſ.* 23.

Snuff manufacturers to provide caſks, &c.

And every manufacturer of ſnuff ſhall provide proper moveable caſks for preparing, laying down, or putting into bins, ſnuff work and tobacco-ſtalks for flour; and ſhall place them ſo as that the officer may conveniently examine and weigh the ſame, at all times; and ſhall mark every ſuch caſk with a progreſſive number, and the tare and weight thereof; and ſhall not lay down any ſnuff work in any caſk not ſo marked; nor put the ſame in any bin; on the penalty of 50l. 29 *G.* 3. *c.* 68. *ſ.* 86.

And to give notice when they begin to work.

And ſuch manufacturer of ſnuff ſhall, before he begins to liquor or cut any tobacco or ſtalks, &c. or to lay down any ſnuff work, give like notice as aforeſaid to the officer, and ſhall in ſuch notice declare the weights thereof reſpectively, and the number of each particular caſk or bin in which the ſame is intended to be laid down; and ſuch officer ſhall attend accordingly; and ſuch perſon ſhall begin within one hour of the time ſo mentioned, and ſhall without delay proceed therein until the whole is weighed; and ſhall then deliver an account in writing of the quantity intended

intended for each ſort of ſnuff, or flour; and when put into caſks, he ſhall give a like notice, and in the preſence of the officer, ſhall affix to each caſk a ticket ſpecifying the number of ſuch caſk, and the weight of the ſnuff work, &c. therein, and the time when laid down, and what ſort of ſnuff it is intended for; which ticket ſhall be ſigned both by ſuch manufacturer or his ſervant, and the officer; and when the ſame is intended to be taken out to be ground, like notice ſhall be given, and the ſame ſhall be weighed out in the preſence of the officer. And no ſuch manufacturer ſhall mix ſnuff work or tobacco-ſtalks for flour of one making with another; on pain of forfeiting for every offence aforeſaid 50l. *Id. ſ.* 87.

Snuff work, &c. not fit for the purpoſe intended.

Provided always, that if ſuch ſnuff work ſhall afterwards appear to be unfit for the purpoſes ſpecified in ſuch declaration, or be intended to be manufactured contrary thereto; notice thereof in writing ſhall be given to the officer within 48 hours after the delivery of ſuch declaration, and a freſh declaration ſhall be given ſpecifying the ſort it is intended for, and ſuch manufacturer ſhall proceed therein in manner as aforeſaid. *Id. ſ.* 88. 30 *G.* 3. *c.* 40. *ſ.* 9, 10.

Snuff of one ſort may be made into another ſort.

And *Scotch* ſnuff and tobacco-ſtalk flour may be manufactured into brown *Scotch* ſnuff; and tobacco-ſtalk flour into rappee ſnuff, ſubject to the regulations aforeſaid. And on taking ſtock, certain credits ſhall be allowed, as ſet forth in the act; and if on ſuch taking ſtock, any exceſs be found, the ſame ſhall be forfeited, and may be ſeized. 30 *G.* 3. *c.* 40. *ſ.* 19, 20, 21.

To ſnuff work in operation, tobacco, &c. may be added.

And to ſnuff work in operation, tobacco, tobacco-ſtalks, or flour, or returns of tobacco, may be added, on giving to the officer previous to ſuch increaſe being made, a like notice, and conforming to the regulations ſpecified in the act. *Id. ſ.* 11, 12.

Snuff work in cure may be mixed.

And the whole of any parcel of ſnuff work in cure, may be mixed with the whole of any other parcel in cure, although laid down at different times, if the ſame be mixed in the preſence of an officer, to whom notice is to be given as aforeſaid. *Id. ſ.* 13.

200 lb. or above may be taken from tobacco or ſnuff in operation.

And if any manufacturer has occaſion to ſupply his cuſtomers with manufactured tobacco or ſnuff from any parcel in operation before the whole is finiſhed; he may, in the preſence of an officer, take for the purpoſe aforeſaid, any manufactured tobacco or ſnuff not leſs than 200lb. But if taken without conforming to the regulations ſpecified in the act; he ſhall forfeit 50l. *Id. ſ.* 14.

Snuff work when finished to be kept separate till surveyed.

And every manufacturer shall diligently manufacture such snuff work, and stalks for flour when taken out of such cask, according to the notice given; and when the same is finished, he shall deliver to the officer a declaration in writing of the weight of each sort so made, and shall keep the same separate for 24 hours, or until the officer shall have taken an account thereof; on the penalty of 50l. 29 *G.* 3. *c.* 68. *s.* 89.

Except Scotch snuff returned from the mill.

But the same shall not extend to *Scotch* snuff returned directly from the mill; provided at the time the same is taken from the room where deposited, a declaration in writing be delivered to the officer, specifying the weight thereof, and the time when the same was laid down in snuff work. *Id. s.* 90.

Store rooms for dried Scotch snuff.

Provided always, that every manufacturer may have a store room for keeping dried *Scotch* snuff, but the same shall have but one door or opening, which shall be locked up, sealed, and secured by the officer; wherein may be deposited *Scotch* snuff returned directly from the mill, for 6 months, without being taken as a part of his stock. And when the same is intended to be taken out of such room, notice shall be given to the officer, who shall attend and open such room, and such snuff shall be taken out in his presence; and shall be kept separate one making from another; on the penalty of 50l. And if any such manufacturer shall open such store room, except in the presence of an officer, he shall forfeit 200l. *Id. s.* 91, 92.

Persons mixing fustick, &c. with snuff work, or having the same in their possession.

And if any person shall mix any fustick, or other wood; or any leaves, herbs, or plants (other than tobacco); or any earth, clay, or tobacco sand, with any snuff work or snuff; or shall colour the same with any sort of colouring (water tinged with colour only excepted); he shall forfeit 200l. And if any manufacturer or dealer in snuff, shall sell, or expose to sale, or have in his entered premises, any fustick, yellow ebony, touchwood, logwood, red or *Guinea* wood, Braziletto or *Jamaica* wood, Nicaragua wood, or Saunders wood; or any walnut tree, hop, or sycamore leaves; or shall have in his possession any of the aforesaid articles; or any other wood, leaves, herbs, plants, earth, clay, or tobacco sand, mixed with any snuff work or snuff; or such snuff work or snuff coloured (except as aforesaid); he shall forfeit 50l. and the same shall be forfeited, and may be seized. *Id. s.* 93.

And

And any manufacturer of *Britiſh* rappee, *Scotch* or brown *Scotch* ſnuff completely finiſhed, and of which an account has been taken by the officer, may liquor the ſame before mixing with ſnuff of a different making, ſo as it exceed not the legal credit. And if ſuch manufacturer ſhall intend to liquor ſnuff for which the legal credit has not been received, he ſhall give notice thereof to the officer. But no ſnuff ſhall be liquored in leſs parcels than 200 lb. nor in more than four different parcels of one making. 30 *G.* 3. *c.* 40. *ſ.* 15, 16, 17.

Snuff completely finiſhed, may be liquored.

And ſnuff for which ſuch allowance ſhall have been made, ſhall be kept ſeparate from all other ſnuff, and ſhall be ſhewn to the officer on demand; on the penalty of 20l. *Id. ſ.* 18.

And every manufacturer and dealer who ſhall mix *Spaniſh* with ſhort cut tobacco, or any tobacco-ſtalk flour with ſnuff, or ſnuff of different ſorts the one with the other, ſhall every day enter in a book or paper, the quantity ſold, ſent out, or conſumed of 2 lb. or upwards, and the groſs weight thereof, and the time when mixed; on pain of forfeiting 50l. 29 *G.* 3. *c.* 68. *ſ.* 94.

An account to be kept of mixed tobacco or ſnuff ſold or ſent out.

And when any officer ſhall diſcover that the manufacturing of tobacco or ſnuff is carried on in any unentered place; and that if any perſon knowingly aſſiſts, or is any ways concerned in carrying on the ſame; every ſuch perſon ſhall forfeit 30l. over and above all penalties and forfeitures that the proprietor thereof ſhall be liable to; and ſuch officer, or his aſſiſtant, may ſtop and arreſt ſuch perſon, and convey him before a juſtice, who on his confeſſion, or the oath of one witneſs, may convict ſuch perſon ſo diſcovered, who ſhall immediately pay the ſaid penalty to ſuch officer or perſon who brought him; and if not ſo paid, ſuch juſtice ſhall commit him to the houſe of correction to hard labour for ſix months from the day of conviction, or until the ſaid penalty be paid. And for a ſecond offence, he ſhall forfeit 60l. which if not paid in manner aforeſaid, he ſhall be committed in like manner for one year, or until ſuch penalty be paid. *Id. ſ.* 96.

Manufacturing tobacco or ſnuff in unentered places.

And the officers of exciſe, (between 5 in the morning and 11 in the evening without a conſtable, and between 11 in the evening and 5 in the morning with a conſtable,) may enter into any houſe or place belonging to, or made uſe of by any manufacturer or dealer, and take an account of the ſtock found therein; and ſhall give credit (as particularly ſet forth in the act). And if at any time any exceſs in ſtock ſhall be found of which no notice has been

Officers may enter and take ſtock.

given to the officer, unleſs received by permit, the ſame ſhall be deemed and taken to be brought in without permit. *ſ.* 97, 98.

Scales and weights to be provided.

And every manufacturer and dealer ſhall keep ſufficient ſcales and weights for the uſe of the officers, on the penalty of 100 l. And if any ſuch perſon ſhall, in weighing, uſe any art or device to prevent ſuch officer from taking a true weight of ſuch tobacco, &c. he ſhall forfeit 200 l. together with ſuch ſcales and weights, which may be ſeized. *ſ.* 99.

And to aſſiſt the officers.

And every ſuch manufacturer and dealer ſhall, with a ſufficient number of his ſervants, aſſiſt ſuch officer in taking ſuch account of ſtock; on pain of forfeiting 50 l. *ſ.* 100.

Not to be weighed whilſt in operation.

But no officer ſhall weigh any tobacco, tobacco-ſtalks, or ſnuff work, whilſt actually in the operation of manufacture; except ſnuff work intended to be ſent out or received by permit. *ſ.* 101.

To be kept ſeparate.

And unmanufactured tobacco, tobacco in the ſtate of operation, and manufactured tobacco, ſhall be kept ſeparate from each other; on the penalty of 50 l. *ſ.* 102.

Officers may take ſamples.

And the officers ſhall be permitted to take ſamples of tobacco or ſnuff, &c. in the poſſeſſion of any manufacturer or dealer, paying for the ſame (if demanded) the value or uſual price; on the penalty of 100 l. upon refuſal. *ſ.* 103.

An account to be kept of the quantity daily ſold.

And every manufacturer and dealer ſhall, in a book or paper, to be furniſhed by the officers, keep an account of all tobacco, &c. and ſnuffs which he ſhall have ſold, ſent out, or conſumed the preceding day, in quantities of 4 lb. or upwards, of tobacco, &c. and 2 lb. or upwards of ſnuffs: And alſo another book or paper in like manner, if under 4 lb. of tobacco, &c. or 2 lb. of ſnuffs: But no ſuch perſon ſhall have more than one ſuch book or paper of each ſort at the ſame time, which is to be returned to the officer, if in *London*, or any city or market town, every ſix weeks; elſewhere, every ſix months, or when the ſame is filled up, or demanded; and ſhall be verified on oath. And ſuch books and papers ſhall lie open for the inſpection of the officer, and ſhall be made up at his requeſt; on the penalty of 100 l. for every offence. *ſ.* 104, 105.

Unfair increaſe in ſtock to be forfeited.

And if any officer ſhall diſcover any increaſe in ſtock not legally accounted for, the ſame ſhall be deemed and taken to be made by a commodity for which no duty has been paid, and privately brought in without permit; and

ſuch

ſuch increaſe ſhall be forfeited, and may be ſeized; and the perſon in whoſe ſtock ſuch increaſe ſhall be found, ſhall alſo forfeit 20l. *ſ.* 106.

Scotch ſnuff not having gained more than 5lb. in 100lb.

But *Scotch* ſnuff in the cuſtody of a manufacturer or dealer, not having gained more than 5lb. in the 100lb. by the moiſture of the air, ſhall be deemed a fair commodity, and ſuch perſon ſhall have credit for the ſame in his ſtock, and may remove the ſame by permit. And ſuch ſnuff ſhall be kept ſeparate from all other ſnuff, and ſhewn to the officer upon demand; on the penalty of 20l. *ſ.* 107, 108.

Tobacco or ſnuff not to be removed before weighing.

And if any manufacturer ſhall remove any tobacco or ſnuff out of his entered houſe or place before the ſame has been weighed and taken an account of by the officer, or ſhall hide or conceal the ſame from the view of ſuch officer; he ſhall forfeit 50l. *ſ.* 109.

Nor without a permit.

And no tobacco (except returns) of 4lb. and upwards, nor ſnuff of 2lb. and upwards, nor any tobacco ſtalks, *Spaniſh* returns of tobacco, tobacco ſtalks for flour, ſnuff work or tobacco-ſtalk flour exceeding 200lb. ſhall be removed by land or water without a permit, on pain of forfeiting the ſame, with the caſks and package, and alſo the horſes, cattle, boats, barges and carriages uſed in conveying the ſame, which may be ſeized. *ſ.* 110.

Officers to grant permits.

And ſuch officer on requeſt ſhall grant permits, wherein ſhall be limited the time for ſuch removal; and if the goods permitted ſhall not be delivered within the time ſo limited, the ſame ſhall be deemed and taken to be removed without permit. *ſ.* 111, 112.

Exceptions.

But no permit ſhall be granted or be valid for the removal of any ſnuff work from one part of the kingdom to another, except from the entered premiſes of a manufacturer of ſnuff where the ſame was laid down to the mill for the purpoſe of grinding; on forfeiture thereof, together with the horſes, cattle, boats, barges and carriages, which may be ſeized. 30 *G.* 3. *c.* 40. *ſ.* 29.

Requeſt notes to be given.

And no ſuch permit ſhall be granted or be valid, unleſs the requeſt note from ſuch manufacturer or dealer contain the particulars ſpecified in the act, and ſuch permit to correſpond with the requeſt note: And if for removing unmanufactured tobacco (other than ſamples) except the ſame be in the original package, and be removed according to the regulations ſpecified in the act: And all tobacco, &c. removed contrary thereto ſhall be forfeited, together with the caſks and package, and the horſes, cattle, boats, barges, and carriages uſed in the re-

Permits for removing unmanufactured tobacco.

moval thereof, which may be seized. 29 G. 3. c. 68. ſ. 113, 114.

Permit for removing to and from mills.

Provided always, that permits may be granted for the removal of any unmanufactured tobacco, in any quantity not leſs than 200lb. in any package whatſoever, from the entered premiſes of any manufacturer to any mill to be manufactured, and back to ſuch entered premiſes. 30 G. 3. c. 40. ſ. 25. 28.

And every manufacturer of tobacco or ſnuff may manufacture their tobacco, tobacco ſtalks, ſnuff work, and returns of tobacco, at any entered mill, and may remove the ſame by permit to and from ſuch mill. *Id.* ſ. 27.

Tobacco may be finiſhed or ſnuff dried at mills.

Provided, that nothing herein ſhall extend to prevent any manufacturer from ſtoving or finiſhing tobacco, or drying ſnuff work at any mill, provided the officer be allowed to weigh and take an account thereof. 29 G. 3. c. 68. ſ. 115.

Permits when not uſed to be returned.

And where any permit ſhall be granted for the removal of any tobacco or ſnuff, &c. and the ſame ſhall not be removed agreeable thereto, ſuch permit ſhall be returned before the expiration of the time limited for ſuch removal; on forfeiture of treble the value of ſuch goods. And where ſuch permit ſhall not be ſo returned as aforeſaid, and on taking ſtock a decreaſe does not appear to anſwer the contents of ſuch permit, a like quantity ſhall be forfeited, and may be ſeized. *Id.* ſ. 116.

Manufacturer not licenſed as a dealer.

And no manufacturer, unleſs licenſed as a dealer, ſhall have a permit for, or ſhall ſell, or ſend out any manufactured tobacco, *Spaniſh*, or returns of tobacco, in a leſs quantity than 4lb. nor ſnuff than 2lb.; on the penalty of 20l. ſ. 117.

No tobacco, &c. to be taken in without a permit.

And no tobacco, &c. or ſnuff, &c. ſhall be brought into any houſe or place of a manufacturer or dealer without a permit, and alſo notice thereof ſhall be given to the officer; on pain of forfeiting the ſame, together with the caſks and package, which may be ſeized, and ſuch manufacturer or dealer ſhall alſo forfeit treble the value thereof. ſ. 118.

Removing to London, or the ports aforeſaid.

And no tobacco or ſnuff, &c. ſhall be removed from any place without the limits of the bills of mortality or exciſe office in *London*, to any place within thoſe limits; nor from any place without the limits of the ports herein before enumerated, to any place within, or within two miles of thoſe limits; on forfeiture thereof, with the caſks and package, and alſo the veſſels, horſes, cattle, and carriages employed in removing the ſame, which may be ſeized.

ſeized. But the ſame ſhall not extend to the legal removal of the ſeveral articles ſpecified in the act. *ſ.* 119, 120, 121.

And by 30 *G.* 3. *c.* 40. Tobacco ſtalks ſtripped from the leaf may be removed by permit from any entered premiſes out of the limits of the bills of mortality, to any place within thoſe limits, ſubject to the regulations in the aforeſaid act, and this act ſpecified. *ſ.* 26.

Tobacco or ſnuff may be returned with a permit.

And any manufacturer or dealer who hath received into his ſtock by permit, any tobacco or ſnuff, may return the ſame within 48 hours, to the perſon from whom he received it under certain regulations. (See the act.) But if found returned, or returning without permit, or ſhall not be the ſame identical tobacco or ſnuff which had been received, without any alteration; the ſame ſhall be forfeited, with the caſks and package, which may be ſeized, and the perſon who ſhall return the ſame ſhall alſo forfeit 50l. 29 *G.* 3. *c.* 68. *ſ.* 122.

Not to be removed but during certain hours, except by common carriers.

And if any tobacco of 4lb. or upwards, or ſnuff of 2lb. or upwards, or any tobacco ſtalks, &c. ſhall be found removing, unleſs between ſeven in the morning and five in the evening, from 29th *Sept.* to 25th *March*, and between five in the morning and ſeven in the evening from 25th *March* to 29th *Sept.* (except by a common carrier or veſſel which uſually goes out of theſe hours,) the ſame ſhall be forfeited, with the caſks and package, and the horſes, carriages, and veſſels made uſe of in conveying the ſame, which may be ſeized, whether the ſame be accompanied with a permit or not. *ſ.* 123.

Offering tobacco, &c. to ſale without a permit, or hawkers with one.

And if any perſon whatſoever without a permit, or hawkers with one, ſhall offer any tobacco, &c. to ſale, he ſhall forfeit the ſame, together with the package and alſo 20l. And the perſon, to whom it ſhall be ſo offered to ſale, may ſeize the ſame and carry it to the next warehouſe belonging to the cuſtoms or exciſe, and ſhall bring the perſon ſo offering it to ſale before a juſtice, who ſhall commit him to priſon, that he may be proſecuted for ſuch penalty; and the perſon ſo ſeizing the ſame ſhall be entitled to the ſame rewards as the officers of the cuſtoms or exciſe: and in caſe ſuch perſon ſhall deſire it, the commiſſioners may cauſe 3d. for every pound of tobacco, &c. ſo ſeized, to be paid to him, till the ſame can be diſpoſed of, upon a certificate under the hand and ſeal of ſuch juſtice, of ſuch offender being committed to priſon; and after ſale, the money ſo advanced ſhall be replaced out of the produce of ſuch ſale. *ſ.* 124.

Forging permits. And if any person shall counterfeit or forge any permit, he shall forfeit 500l. *s.* 125.

Obstructing officers. And if any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this or any other act; or shall rescue any goods which have been seized; or any vessel, horses, cattle, or carriages which have been forfeited, and for which no particular penalty is provided, he shall forfeit 200l. *s.* 149.

Offering bribes. And if any person shall give or offer any bribe, recompence, or reward to any officer to prevent him doing his duty, whether the same be accepted or not, he shall forfeit 500l. *s.* 150.

Entry to be made before landing. And no tobacco, snuff, &c. shall be landed, without first making entry thereof with the officers of the customs, on forfeiture thereof, with the casks and package. *s.* 152.

Officers may search suspected places. And if any officer of excise shall have cause to suspect that any tobacco, &c. or snuff, which shall have been imported contrary to this act, or forfeited by this or any other act, is deposited, lodged, hid, or concealed; in which case, if within *London* or *Westminster*, or the limits of the chief office, upon oath made before two commissioners; elsewhere upon oath made before one justice setting forth the ground of his suspicion, such commissioners or justice may by warrant authorize such officer by day or night, but if in the night in the presence of a constable, to enter into such suspected place, and to seize and carry away all such tobacco, &c. or snuff which shall be there found, together with the casks and package containing the same. And if any person shall obstruct or hinder any such officer so authorised, or person assisting him in the execution of such warrant; he shall forfeit 100l. *s.* 153.

No manufacturer or dealer to act as a magistrate. And no manufacturer or dealer in tobacco or snuff, or person anywise interested or concerned therein, shall act as a magistrate in the execution of any act relating to tobacco or snuff; and all acts done by such person shall be utterly null and void. *s.* 154.

Powers of former acts to extend to this act. And the powers of 12 *C.* 2. *c.* 24. and of any other law respecting the excise (except hereby altered) are to be exercised in levying the excise duties thereby imposed. *s.* 170. 36 *G.* 3. *c.* 13. *s.* 6.

[And there are several regulations made and drawbacks allowed on the *exportation* of tobacco, &c. for which see the act itself and 36 *G.* 3. *c.* 13. *s.* 5.]

Adulterating tobacco or snuff. Every person who shall cut any walnut, hop, sycamore, or other leaves, or any other herbs, plants, or materials

(not being tobacco leaves or plants); or ſhall colour or cure any ſuch to make the ſame reſemble tobacco, or ſhall ſell the ſame mixed or unmixed for tobacco, —— ſhall forfeit 5 s. a pound, half to the king (charges of the proſecution firſt deducted), and half with full coſts to him who ſhall ſue. 1 *G. ſt.* 2. *c.* 46. *ſ.* 1.

And every perſon who ſhall make, mix, or colour any ſnuff with oaker, umber, or other colouring, except water tinged with *Venetian* red only; or ſhall mix with ſnuff any ruſtick or yellow ebony, touchwood, or other wood, or any dirt, ſand, or ſmall tobacco ſifted from tobacco,—ſhall forfeit the ſame, and 3 l. for every pound weight, half to the king, and half to him that ſhall ſue. 1 *G. ſt.* 2 *c.* 46. *ſ.* 7. 5 *G. c.* 11. *ſ.* 22.

And all ſuch leaves and other materials, and all engines, utenſils, and tools for working the ſame, may be ſearched for and ſeized, by warrant of three commiſſioners of the treaſury or of the cuſtoms. 1 *G. ſt.* 2. *c* 46. *ſ.* 3.

But no houſe or warehouſe ſhall be opened to ſearch for or ſeize the ſame, but at ſeaſonable hours, and not without a ſpecial warrant from two juſtices of the peace. *ſ.* 4.

And the ſaid materials or engines found and ſeized within ſix miles of any port, ſhall be brought to the next cuſtom houſe warehouſe; and if at a greater diſtance from any port, ſhall be ſecured by order of two juſtices at the king's charge, till the cauſe of ſuch ſeizure ſhall be determined at the next, or at fartheſt the ſecond quarter ſeſſions after ſeizure; and the ſame, after condemnation or recovery by judgment of ſuch ſeſſions, ſhall be openly burned or deſtroyed by order of the ſame, at his majeſty's charge. *ſ.* 4.

And any ſervant employed in manufacturing or ſelling ſuch leaves or materials, ſhall on conviction before two juſtices, by oath of one witneſs, be committed to the common gaol or houſe of correction, to be kept to hard labour not exceeding ſix months. *ſ.* 5.

Importing tobacco ſtalks.

If any tobacco ſtalks or ſtems ſtript from the leaf ſhall be imported; the ſame ſhall be forfeited, and burned, and the officer ſeizing the ſame ſhall be allowed 1 d. a pound; and every perſon who ſhall be aſſiſting or otherwiſe concerned in unſhipping the ſame, or to whoſe hands they ſhall knowingly come after unſhipping, ſhall forfeit treble value, together with the veſſels, bags, caſks, or other things wherein the ſame are contained, and the horſes, cattle, carts and other carriages made uſe of in removing the ſame; half to the king, and half to ſuch officer

officer of the customs who shall seize, inform, or sue for the same. 12 G. c. 28. s. 13. 5 G. 3. c. 43. s. 4. 6. 8 G. c. 18. s. 16.

Power of the justices.

And all seizures of vessels or boats of 15 tons or under; and of horses or other cattle and carriages, by virtue of any act relating to the customs, may be prosecuted, heard, and determined, before two justices residing near where the seizure was made. 8 G. 3. c. 18. s. 16. 5 G. 3. c. 43. s. 6. 29 G. 3. c. 68. s. 156.

And all penalties and forfeitures in the excise, may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*, half to the king, and half to him who shall sue (unless otherwise particularly directed). 29 G. 3. c. 68. s. 157. 30 G. 3. c. 40. s. 31.

XX. *Vinegar and verjuice.*

Vinegar maker to be licensed.

Every maker of vinegar for sale shall take out a licence, for which he shall pay 10l.; and shall renew the same annually ten days at least before the end of the year; on pain of 50l. 24 G. 3. c. 41. *sess.* 2. s. 1. 7.

But persons in partnership need only take out one licence for one house. s. 8.

Importation.

By 27 G. 3. c. 13. *Sched.* (F.) For all *vinegar* imported shall be paid per ton a duty of — — — — £. 32 s. 18 d. 10

Home duty on vinegar.

And for every barrel of *vinegar*, *vinegar beer*, or liquors preparing for *vinegar*, which shall be brewed or made in *Great Britain* for sale, shall be paid by the maker a duty of 0 10 0¾

And by 10 & 11 *W.* c. 21. 34 quarts shall be accounted a gallon of vinegar, according to the standard ale quart. s. 15.

Entry to be made of places used for making vinegar.

And after *August* 1st, 1786, every vinegar maker shall make entry with the officer of excise, of the house or place where he intends to carry on the business; and whether he intends to make vinegar from malt or corn, or melasses or sugar; or from any and what other materials. 26 G. 3. c. 73. s. 56.

Officers may enter and survey.

And such officer may at all times by day and night, (but if in the night in the presence of a constable,) enter into any places used by such persons, and take an account of such liquors therein, and shall make a report thereof in writing to the commissioners, leaving a true copy thereof under his hand, with such maker, if demanded, in writing, under the

the penalty of 10l. 7 & 8 *W.* *c.* 30. *ſ.* 25. 12 *G.* *c.* 28. *ſ.* 30. 12 *C.* 2. *c.* 24. *ſ.* 33.

At what times only to receive liquors.

And by 10 & 11 *W.* *c.* 21. No vinegar maker ſhall receive into his cuſtody, any liquors for making of vinegar, nor deliver out any vinegar in caſks, or by the gallon, without notice firſt given to the officer, unleſs from *Sept.* 29, to *Mar.* 25, yearly, between ſeven in the morning and five in the evening; and from *Mar.* 25, to *Sept.* 29, between five in the morning and ſeven in the evening; on pain of 50l. *ſ.* 12.

To be ſhewn to the gauger.

And on receiving ſuch liquors into his cuſtody, he ſhall ſhew the ſame to the gauger before he mix them with any other liquors, rape, or other materials; on pain of 20l. *Id.* *ſ.* 13.

Penalty on uſing any place without giving notice.

And if any vinegar maker ſhall, without giving notice at the next exciſe office, or to one of the commiſſioners, uſe any ſtorehouſe, warehouſe, cellar, or other place, for making or keeping any vinegar-beer, or liquor preparing for vinegar, he ſhall forfeit 50l. *Id.* *ſ.* 14.

Concealing.

And if any maker of vinegar for ſale ſhall conceal any vinegar, or liquor preparing for vinegar, from the view of the gauger, he ſhall for every barrel forfeit 40s. 7 & 8 *W.* *c.* 30. *ſ.* 16.

Refuſing to admit the gauger.

And if ſuch maker ſhall on demand made by ſuch gauger in the day time, (or if by night in the preſence of a conſtable,) refuſe to permit him to enter his houſe, ſtorehouſe, or other place uſed by him, and to take an account of the ſaid liquors, he ſhall forfeit 15l. *Id.* *ſ.* 17.

Vinegar maker not to be a diſtiller or rectifier.

And after 1 *Feb.* 1787, no perſon carrying on the trade of a vinegar maker from melaſſes or ſugar or other materials (except malt or corn) ſhall carry on (either alone or in partnerſhip) the trade of a diſtiller or rectifier of ſpirits, in the ſame premiſes, or within two miles thereof; and all entries made by ſuch perſon ſhall be void. 26 *G.* 3. *c.* 73. *ſ.* 55.

Keeping liquor proper for vinegar.

And all ſtale beer, returns of beer or ale, cyder, verjuice, or any other liquor proper to be made into vinegar, which ſhall be found in the poſſeſſion of any common vinegar maker, (except ſuch as are to be drank in his family, and which ſhall be kept ſeparate for that purpoſe,) ſhall be deemed vinegar, or liquors preparing for vinegar. 10 & 11 *W.* *c.* 21. *ſ.* 11.

Entry and payment of the duty.

And every ſuch vinegar maker ſhall make entry once a month at the next exciſe office, of all liquors made within that month; and alſo within a month after ſuch entry, ſhall clear off the duties, on pain of double duty. 12 *C.* 2. *c.* 24. *ſ.* 29, 30, 1, 2.

By

Duty on verjuice.

By the 27 *G.* 3. *c.* 13. *Sched.* (F.) For every hogſhead of *verjuice* which ſhall be made in *Great Britain* for ſale, ſhall be paid by the maker a duty of - - - s. 7 d. 8

All penalties and forfeitures are to be recovered, levied, and mitigated as by the exciſe laws.

XXI. Wine.

In veſſels of what ſize to be imported.

By the 1 *G.* 2. *ſt.* 2. *c.* 17. No wine (except of the growth of *Tuſcany*, *Turkey*, or the *Levant*) ſhall be imported in flaſks, bottles, or veſſels, leſs than 25 gallons; on pain of forfeiting the ſame, or the value: half to the king, and half to him that ſhall ſeize or ſue by the laws of exciſe, or in the courts at *Weſtminſter*. *ſ.* 7, 8.

And by the 18 *G.* 3. *c.* 27. No wines of the growth of *Spain* or *Portugal*, and no *French* wines, ſhall be imported, in any ſmaller veſſel than what is commonly called an hogſhead; on pain of forfeiture, half to the king and half to the officer of the cuſtoms who ſhall ſeize and proſecute.

Duty on importation.

By 27 *G.* 3. *c.* 13. *Sched.* (F.) For every ton of *French*, *Rhemiſh*, *German*, or *Hungary* wine imported into *Great Britain*, and ſo in proportion for a greater or leſſer quantity, ſhall be paid by the importer, before landing, an exciſe duty of - - £. 17 s. 17 d. 0

And by 28 *G.* 3. *c.* 33. *ſ.* 1. 5. For every ton of other wine, a like duty of - 17 17 0

And by 35 *G.* 3. *c.* 10. an additional duty ſhall be paid for every ton of *French* wine imported, and ſo in proportion for a greater or leſſer quantity - - 30 0 0

And for every ton of *Portugal*, *Madeira*, and *Spaniſh* wine, and wine of all other ſorts - - - 20 0 0

And by 36 *G.* 3. *c.* 123. a further additional duty is impoſed on every ton of *French* wine of - - - 30 0 0

And upon every ton of *Portugal*, *Madeira*, and *Spaniſh* wine, and wine of all other ſorts, of - - - 20 0 0

And by the ſaid acts ſeveral drawbacks are allowed on wine exported.

Removing from the outports to London.

And no wine of any ſort, exceeding 10 gallons in caſk, or three dozen in bottles, imported into any other port, ſhall be removed at the ſame time, and in the ſame carriage, either

either by land or water, into the port of *London*, or within 20 miles from the *Royal Exchange*, before the difference of the duties payable at the out-ports, and in the port of *London*, in addition to the duties paid on importation, shall have been paid; and without a certificate specifying such payment, and the quantity and quality of such wine; on pain of forfeiture thereof, together with the casks and vessels containing the same, which may be seized by any officer. 27 *G.* 3. *c.* 13. *s.* 13.

Licence for selling by wholesale.

And by 26 *G.* 3. *c.* 59. Every person who shall deal in or sell foreign wine by wholesale, shall first take out a licence from the officers of excise, which they are required to grant without fee; and shall renew the same annually ten days at least before the end of the year, on pain of forfeiting 100*l.* *s.* 8, 9.

First take out a licence.] In the case of *K.* v. *The commissioners of excise*, *E.* 28 *G.* 3. it was determined, that a person who intends to become a wholesale dealer in foreign wine, must take out a licence, and enter his warehouse as directed by 26 *G.* 3. *c.* 59. *before he lays in his stock:* And that such dealer is not entitled to a permit to remove wine sold, which wine was laid in *before* he took out his licence. *Durnf.* and *East*, 2 V. 381.

Persons in partnership.

But persons in partnership need not take out more than one licence for one house. But such licence shall not extend to any other house or place than such as has been entered. 26 *G.* 3. *c.* 59. *s.* 9.

Not to be sold in less quantities than may be imported.

And by 30 *G.* 2. *c.* 19. *s.* 2. After *July* 5, 1757, no person, unless he be authorized and enabled in the manner hereinafter prescribed, shall sell or utter by retail, that is, by the pint, quart, pottle, or gallon, or by any other greater or less retail measure, or in bottles, in any less quantity than shall be equal to the measure of the cask or vessel in which the same shall have been or may lawfully be imported, any kind of wine or liquor called or reputed wine; on pain of 100*l.* half to the king and half to the informer, to be recovered as the penalties for offences against the stamp acts. (Provided, that the said penalties may be mitigated by the commissioners of the said duties as they shall think fit; the reasonable costs and charges of the officers and informers in the prosecution being always allowed over and above the mitigation. 32 *G.* 2. *c.* 19. *s.* 1.)

Licence for retailing.

By the 30 *G.* 3. *c.* 38. After the 10th of *October* 1790, every retailer of foreign wine shall take out a licence from the officers of excise, for which he shall pay, if he has neither a spirit or beer licence - £. 5 4 0

If

If he has a beer licence but not a spirit licence - - - - £. 4 4 0

If he has both a beer and spirit licence 2 4 0

Which licence shall continue in force until and upon the 10th day of *October* next ensuing the granting thereof, and no longer: Provided nevertheless, that where such licence shall be first granted between the 5th day of *April* and the 10th of *October* in any year, there shall be charged only a rateable proportion of the money aforesaid, according to the time for which such licence shall be granted. *s.* 6, 7, 8.

Penalty. And every person who shall retail any foreign wine, without such licence, shall forfeit 50l. *s.* 9.

To be renewed annually. And the same shall be renewed annually ten days at least before the expiration of the former licence, on the like penalty of 50l. *Id.*

Who only to be licensed. Provided always, that no licence shall be granted by virtue of this act, to any other than such persons only as might have licences before the passing thereof. *s.* 14.

And by 32 *G.* 3. *c.* 59. After 10th *October* 1792, no person by virtue of any licence from the officers of excise for the sale of foreign wine, shall sell the same by retail to be drank in his own house, or place thereto adjoining or belonging; except a licence shall have been granted to him by the justices to sell ale and beer in the same house. And the justices shall have the same jurisdiction, power, and authority over such retailers of foreign wine, as they now have over alehouse keepers. *s.* 9.

And if any person shall sell by retail to be drank as aforesaid, any such foreign wine without having such ale licence as aforesaid; he shall forfeit the like penalties as persons selling ale without licence are subject to by 5 *G.* 3. *c.* 46. The same to be recovered and applied, as by that or any other act relating thereto is directed. *Id.*

Licensed person dying or removing. And on the death or removal of any such licensed person, the officers of excise may authorize the executors or administrators, wife or child, of such deceased person, or the assigns of such person so removing, to carry on such trade the remainder of the year. 30 *G.* 3. *c.* 38. *s.* 10.

Persons in partnership. Persons in partnership need not take out more than one licence for one house or place. But such licence shall not extend to any other house or place than such as shall be entered. *Id.*

House or place to be entered. But no licence shall authorize any person to sell wine in any other than such house, shop, or place in which he shall retail the same at the time of granting such licence,

and

and an entry thereof in writting ſhall be made at the exciſe office in the name of ſuch perſon at the time of granting ſuch licence. *Id.*

And every perſon who ſhall ſell or expoſe to ſale any foreign wine in a leſs quantity than ſhall be equal to the quantity in which the ſame may be lawfully imported by way of merchandize, ſhall be deemed a retailer within the meaning of this act. *ſ.* 15. Who ſhall be deemed wholeſale, and who retail dealers.

And by 26 *G.* 3. *c.* 59. Every perſon who ſhall have taken out a licence for retailing foreign wine, and who ſhall not take out a licence for retailing ſpirits or ale, ſhall be deemed a dealer by *wholeſale*; but if he is licenſed for retailing either ſpirits or ale, he ſhall be deemed a *retailer*. *ſ.* 11.

And every ſuch *wholeſale* dealer ſhall put the words *Dealer in Foreign Wine*, over the door, or in the front of the houſe or place made uſe of by him for keeping ſuch wine; on the penalty of 50l. *Id. ſ.* 14. Certain words to be put up.

And if he ſhall put up thoſe words, on any unentered place, he ſhall forfeit 100l. *Id. ſ.* 15.

And every *retailer* ſhall cauſe the word *wine* to be hung out on a ſign, or to be put up in ſome viſible place in the front of his houſe, or other place made uſe of for the retailing of wine, to denote that ſuch retailer is a dealer in wine, and liable to take out a licence for the retailing thereof: And if any perſon ſhall ſell wine by retail without ſuch token, he ſhall forfeit 10l. 32 *G.* 2. *c.* 19. *ſ.* 6.

And every dealer in foreign wine ſhall make entry in writing at the next exciſe office, of all warehouſes, vaults, or other places by him made uſe of for keeping foreign wine for ſale; on pain of forfeiture thereof, and of the caſks, bottles, and package containing the ſame; and alſo of 100l. But not to extend to wine ſold whilſt lying openly on the quay. 26 *G.* 3. *c.* 59. *ſ.* 12. Warehouſes, &c. to be entered.

And when any ſuch entry ſhall have been made by any ſuch dealer, no other dealer (not being in partnerſhip with the dealer who made ſuch firſt entry) ſhall, on any pretence whatſoever, make entry of the ſame, or of any other warehouſe or place within the ſame houſe or tenement in which ſuch firſt entry ſhall then be exiſting; but every perſon making ſuch further entry ſhall be deemed a dealer in foreign wine without entry, and ſhall be ſubject to the like penalties as dealers in foreign wine without entry. *ſ.* 13.

Officers may enter warehouses, &c. and take samples.

And any officer of excise may enter, upon his request, by day or night (but if in the night in the presence of a constable) any place made use of for keeping wine, by any dealer, either by wholesale or retail, and by tasting or otherwise (except wine in bottles) take an account thereof, and also samples of the wine whether in casks or bottles, paying for the same; and any person obstructing the officer shall forfeit 100l. *Id. s.* 17, 18.

Casks, &c. to be marked by the dealer with the quantity they will contain.

And every dealer shall mark upon every cask or vessel containing more than *three* gallons of foreign wine, the quantity such vessel is capable of containing, and also the sort of wine kept therein; on pain of forfeiture thereof, and the casks or vessels containing the same; which may be seized by any officer. *Id. s.* 19.

Places for keeping wine to be shewn to the officer, and the casks to be marked by him.

And every dealer shall shew to the officer under whose survey he is, every cask or vessel above three gallons, and every bin or place in which he shall keep any foreign wine, on forfeiture thereof, and also of such vessels: And the officer shall mark such casks and bins so shewn to him; and if any person shall rub out or deface such mark; or shall without notice given at the excise office, set up any vessel or utensil for keeping or containing of wine, or alter or enlarge any vessel, utensil, or bin already set up, capable of holding three gallons; or shall have the same in any concealed or unentered place; he shall forfeit for every such bin, vessel, or utensil so set up or altered 50l. *Id. s.* 20, 21.

Notice to be given when wine is intended to be drawn off.

And every wholesale dealer shall, before he begins to draw off or bottle any wine, give six hours notice in writing if within the bills, elsewhere 12 hours, to the officer of excise, of his intention to draw off or bottle any wine, and the particular warehouse or place, and the quantity, and into how many casks or bottles the same is intended to be drawn, and what sort of wine, and from what particular cask; and such officer may attend if he think fit; and the same shall be packed or piled in the presence of such officer if he attend, or an account thereof given to him upon his next survey. And no wine shall be removed from the place in which it has been so deposited without giving like notice; on the penalty of 50l. But not to extend to a small number of bottles drawn off more or less than is contained in such notice. *Id. s.* 22.

Provided, that if the dealer shall not begin and proceed to draw off or bottle such wine within one hour of the time mentioned in the notice, the same shall be void. *Id.*

But

But nothing herein contained ſhall extend to make it unlawful for any wholeſale dealer to draw off or bottle any wine at his will and pleaſure, for the purpoſe of immediately ſending out the ſame, without giving notice. *Id. ſ.* 22. Exception.

And all foreign wine of different ſorts ſhall be kept ſeparate, on the penalty of 50l. *Id. ſ.* 23. Wine of different ſorts to be kept ſeparate.

And all *retail* dealers who ſhall have in their cuſtody, any cyder or ſpirits, ſhall keep the ſame ſeparate and apart from foreign wine; on pain of forfeiting 10s. for every gallon of cyder or ſpirits, together with ſuch wine, cyder, and ſpirits, and the caſks, bottles, and package containing the ſame; which may be ſeized by any officer. *Id. ſ.* 24. Cyder and ſpirits to be kept ſeparate from wine.

And all cyder, ſweets, *Britiſh* made wine, mead, ſpirits and other liquors whatſoever, found in any entred place for the keeping or ſelling of foreign wine, by any wholeſale dealer, ſhall be deemed and taken to be foreign wine within the meaning of this act, of the ſame ſort as the wine with which it ſhall be kept; or if kept ſeparate from any wine, then the ſame ſhall be deemed and taken as *French* red wine. *Id. ſ.* 29. Cyder, &c. found amongſt wine.

But no dealer in or ſeller of foreign wine ſhall have in his poſſeſſion any *Britiſh* made *wine*, or *ſweets*, on pain of forfeiting the ſame, and alſo 10s. a gallon. *Id. ſ.* 25. No dealer in foreign wine to have ſweets in his poſſeſſion.

And for the better aſcertaining the quantity of wine ſold by dealers, every perſon who ſhall ſell any foreign wine, ſhall keep an account of the quantity ſold, ſent out, or conſumed each day under three gallons, expreſſing the number of gallons or bottles; and ſhall every day enter in a book to be kept for that purpoſe, an account of the groſs quantity ſold the preceding day; and alſo in another book ſhall enter each parcel of three gallons or more which ſhall be ſold or ſent out in each day, expreſſing the number of gallons or bottles; which books are to be prepared by the commiſſioners, and delivered unto the dealer upon demand; but no dealer ſhall have above one book of each ſort in his cuſtody, at one time; and when filled up, ſhall be returned to the officer from which it was received, and the truth of the entries ſhall be verified on oath by ſuch dealer or his ſervant who kept the ſame, and made the entries therein, to be adminiſtered by the officer; and a new book ſhall be thereupon delivered to the dealer, and ſo *toties quoties* as often as ſuch book ſhall be filled up: and ſuch books ſhall lie open to be peruſed by the officer; and the dealer ſhall, at the requeſt of the officer, fill up ſuch An account to be kept of wine daily ſold.

books respectively, with the quantity by him sold in each day. And every dealer or seller offending in any of the matters aforesaid, or making any false entry in any such books, shall forfeit 20l. *Id. s.* 26.

Excess in stock to be forfeited.

And if any officer shall find that the quantity of foreign wine in the stock of any wholesale dealer, added to the quantity for which permits have been granted, and also to the quantity sold, sent out, or consumed in small quantities under three gallons since the last account was taken, exceeds the stock left in hand on taking the account, after adding the quantity since received by permit (if any); such quantity so found in excess shall be forfeited, and may be seized by the officer; and the person in whose stock the same is found, shall also forfeit double the value thereof.—But not to extend to an excess of stock occasioned by receiving wine from any lawful quay, and in the original casks in which the same was imported. *Id. s.* 27, 28.

Not to be removed without permit.

And no foreign wine exceeding three gallons shall be removed without a permit as directed by this act, on forfeiture thereof, and the same may be seized by any such officer. *s.* 34.

If not delivered within the time limited.

And if any wine shall not be delivered within the time limited in the permit (except in case of some unavoidable accident) the same shall be deemed and taken as wine removed without permit.——Provided always, that the same shall be restored without delay, if the person who hath the charge thereof at the time of the seizure, enter into recognizance with one surety, before a neighbouring justice, in double the value of the goods to prove within one month next ensuing, to the satisfaction of the commissioners of excise, that such wine, through unavoidable accident, could not be so delivered; and the justice shall certify upon the back of the permit, that such recognizance hath been entered into, and also allow such further time for the wine to be delivered, as to him shall seem meet: which indorsement shall have the same force as a permit granted according to this act: and the justice shall forthwith transmit every such recognizance to the king's remembrancer in the court of exchequer. *s.* 31. 35, 36.

Wine brought into warehouses without permit.

And no wine shall be brought into any place made use of by any dealer in foreign wine, without an authentic permit granted and given according to the directions of this act, which shall be produced to, and left with the officer under whose survey such dealer shall then be, on forfeiture thereof, together with the casks, bottles, and package

package containing the ſame, which may be ſeized by any officer. *ſ.* 32.

Private perſons removing wine to have a permit.

And every private perſon (not being a dealer either by wholeſale or retail) who ſhall remove any foreign wine from one place to another, ſhall take out a permit from the officers of exciſe, on forfeiture thereof, with the caſks, bottles, and package containing the ſame, and alſo the horſes, carriages, or boats, uſed in the removal thereof, and the ſame may be ſeized. *ſ.* 33.

But if not removed, ſuch permit to be returned.

And where any permit ſhall have been granted to any dealer in wine, or private perſon as aforeſaid, and he ſhall not actually and really ſend away the wine by ſuch permit authorized, nor return the permit to the officer who granted the ſame, before the expiration of the time limited therein, he ſhall, for every gallon of wine mentioned in ſuch permit, forfeit treble the value thereof, to be eſtimated according to the higheſt price of ſuch wine in *London*. *ſ.* 37, 38.

Where the decreaſe in ſtock is not proportionate to the permit.

And where ſuch permit ſhall not be by the dealer returned as aforeſaid, and upon taking an account of the ſtock remaining in his hands, there ſhall not appear a decreaſe to anſwer the wine mentioned in the permit, then, and in ſuch caſe, ſuch dealer ſhall forfeit the like quantity of wine ſo permitted and not removed, to be ſeized by the officer, out of any wine in his cuſtody of the denomination given in the permit; but if he ſhall not then have ſuch quantity of the ſame denomination in his cuſtody, he ſhall forfeit 100*l*. *ſ.* 37.

Uſing falſe permits, or forging recognizances, &c.

And if any perſon ſhall counterfeit or forge any permit, or fraudulently alter or eraſe any permit; or knowingly or willingly give or receive any falſe or untrue permit, or publiſh or make uſe of the ſame, or receive the ſame with any wine; or ſhall fraudulently alter, or eraſe ſuch certificate or indorſement, or knowingly or willingly publiſh or make uſe of the ſame; he ſhall forfeit 500*l*. *ſ.* 39, 40.

Hiding or concealing foreign wine.

And in caſe any foreign wine ſhall be fraudulently depoſited, hid, or concealed, with intent to defraud his majeſty of the duties, the ſame ſhall be forfeited, together with the caſks, bottles, and package containing the ſame. And the better to enable the officers to make diſcovery thereof, if any officer ſhall have cauſe to ſuſpect that any wine is ſo fraudulently depoſited, hid, or concealed, if within *London* or *Weſtminſter*, or the limits of the chief office of exciſe, upon oath made by ſuch officer before two commiſſioners of exciſe, elſewhere before a juſtice, ſetting forth the grounds of his ſuſpicion; ſuch commiſſioners or

justice respectively, before whom such oath shall be made, may by warrant impower such officer by day or night, (but if in the night in the presence of a constable,) to enter such suspected place, and to seize and carry away such wine which shall be found so concealed, as forfeited, together with the casks and package. *s.* 42.

Obstructing, or attempting to corrupt officers.

And if any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this act; or shall rescue any foreign wine after seizure, or stave, break, destroy, or damage any cask, vessel, bottle, or other package whilst any officer is attempting to seize the same; or shall offer to bribe or corrupt any officer to do contrary to his duty, whether such offer be accepted or not; he shall forfeit 100*l.* for every offence. *s.* 44, 45.

Opening wine sealed for exportation.

And if any person (except the proper officer) shall open any package of foreign wine sealed for exportation, or shall wilfully destroy or deface the seal or mark, he shall forfeit 50*l.* *s.* 47.

Landing wine which has been shipped.

Provided, that if any wine so shipped for exportation, shall be unloaded, or laid on land, (shipwreck, &c. excepted,) the same, or the value thereof, shall be forfeited, over and above the penalty in any bond which may have been given. *s.* 48.

Officers not entitled to rewards, unless notice of seizure is given in 12 hours.

But no officer of the customs shall be entitled to any reward for any seizure, unless he give notice thereof within 12 hours, at the next excise office, or to the supervisor of excise. *s.* 50.

No dealer in wine to act as a justice.

And no person being a dealer in, or seller of, foreign wine, or any way interested or concerned therein, shall, during such time, act as a justice in the execution of this act: and all acts done by any such person shall be utterly void. *s.* 51.

Penalties how to be recovered.

Finally, all fines, penalties, and forfeitures by this act imposed, may be sued for, recovered, levied, or mitigated, as by the laws of excise, or in the courts at *Westminster*, and distributed half to the king, and half to him that shall sue. *s.* 55. 30 *G.* 3. *c.* 38. *s.* 16.

And all powers in former acts relating to the retailing of wine shall extend to this act, unless repugnant to, or altered thereby. 30 *G.* 3. *c.* 38. *s.* 19.

[*N. B.* There is the same indemnity for officers in putting this act (26 *G.* 3. *c.* 59.) in execution, as by 23 *G.* 3. *c.* 70. which is set forth at large under title Excise in general.]

Provided,

Provided, that nothing herein shall be prejudicial to the privileges of the two universities. 30 *G.* 2. *c.* 19. *s.* 9. 26 *G.* 3. *c.* 59. *s.* 11. 30 *G.* 3. *c.* 38. *s.* 11. Not to extend to the two universities.

Nor to the company of vintners in *London*, or to any other city or town corporate; but they may enjoy such privileges as they have heretofore lawfully enjoyed. Provided, that no person who shall be admitted to the freedom of the said company of vintners by redemption only, shall be exempted from taking such licence: but only the freemen of the said company who have been already admitted to their freedom, or who shall after the said 5th day of *July* 1757 be admitted to their freedom in right of patrimony or apprenticeship, shall be entitled to such exemption. 30 *G.* 2. *c.* 19. *s.* 11. 26 *G.* 3. *c.* 59. *s.* 11. 30 *G.* 3. *c.* 38. *s.* 12. Nor to the vintners' company.

Nor to extend to the mayor and burgesses of *St. Albans*, for appointing and licensing by virtue of their charter three wine taverns for and towards the maintenance of the free school there. 30 *G.* 2. *c.* 19. *s.* 12. 26 *G.* 3. *c.* 59. *s.* 11. 30 *G.* 3. *c.* 38. *s.* 13. Nor to the mayor, &c. of St. Albans.

The lord chancellor, lord treasurer, lord president, lord privy seal, and two chief justices, or any three of them, shall yearly between *Nov.* 20 and *Dec.* 31, set the prices of foreign wine sold in gross; so that proclamation be made thereof in term time in the court of chancery, or in the town where they shall be sold: and if any person shall offend against the said assessment, he shall forfeit for every vessel 40*s.* half to the king, and half to the mayor if in a town corporate; and if not, to him that shall sue. 28 *H.* 8. *c.* 14. *s.* 2. 3. 37 *H.* 8. *c.* 23. *s.* 2. 12 *C.* 2. *c.* 25. *s.* 13. Setting the prices of wines.

And the justices of the peace, and mayors, may hear and determine the defaults of such offenders, and punish them by imprisonment, or otherwise, by their discretions. 28 *H.* 8. *c.* 14. *s.* 4.

And by the 37 *H.* 8. *c.* 23. If any person shall refuse to sell at the prices limited, the mayor and recorder and two ancient aldermen in *London*, being no vintners; and the mayor, aldermen, and other head officers elsewhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and sell the same to the owner's use. *s.* 3.

No person selling wine shall mix wines together, nor with any other thing; on pain that the seller in gross shall forfeit 100*l.* and the retailer 50*l.* half to the king, and half to him that shall sue in any court of record. 12 *C.* 2. *c.* 25. *s.* 11. Adulterating wines.

Wine measure. By the 5 *An.* *c.* 27. 231 cubical inches shall be a wine gallon, 63 gallons a hogshead, 126 gallons a butt or pipe, and 252 gallons a ton. *s.* 17.

XXII. Wire.

Importation. By 27 *G.* 3. *c.* 13. several duties are imposed on *wire* imported, as particularly set forth in tables annexed to the act.

Home duty on wire. And by the same act the following duties are laid upon wire made in *Great Britain*, (*viz.*)

For every ounce troy of *gilt wire*, to be paid by the maker, $9\frac{1}{4}$d.

For every ounce troy of *silver wire*, 7d.

Wire drawers to be licensed. And every *wire-drawer* or other person who shall draw any gilt or silver wire, commonly called *big wire*, shall take out a licence, for which he shall pay 2l. and shall renew the same annually, ten days at least before the end of the year, on pain of 20l. 24 *G.* 3. *c.* 41. *sess* 2. *s.* 1. 7.

But persons in partnership need only take out one licence for one house. *s.* 8.

Places of making to be entered. And every person who shall draw any gold or silver into such wire as aforesaid called *big wire*, shall first give notice in writing at the next office for the said duties, of his name and place of abode, and where he intends to work, on pain of 20l.; and no refiner, wire-drawer, or other person, shall draw any gold or silver into such big wire, at any place other than some common bar-house to be approved by the commissioners, on pain of 20l. 10 *An.* *c.* 26. *s.* 49.

And all gilt and silver wire, and bars for making it, which shall be found in any private work house, and all private utensils for barring or drawing it, of which notice hath not been given, shall be forfeited and seized, or the value thereof recovered. *s.* 59.

Officer to enter and survey. And the officer shall at all times, by day or night, and if in the night in presence of a constable, be permitted on his request to enter the bar-house, work-house, or other place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall appoint, leaving a copy thereof, if demanded, with the maker; and if he shall refuse to leave such copy (after demand in writing, 12 *G.* *c.* 28 *s.* 30.) he shall forfeit 40s. *s.* 52.

Obstructing the officer. And if any such maker shall obstruct the officer, in the execution of his office, he shall forfeit 20l. *s.* 55.

And

And if he ſhall in weighing hinder the officer from taking a juſt account; or by any contrivance hinder or impede him, he ſhall forfeit 100l. 26 *G.* 3. *c.* 77. *ſ.* 8.

Scales and weights.

And the maker ſhall keep juſt weights and ſcales at the place of making the wire, and permit and aſſiſt the officer to weigh; on pain of 10l. *ſ.* 54.

And by the 10 *G.* 3. *c.* 44. if he ſhall uſe falſe or inſufficient ſcales or weights, he ſhall forfeit 100l.: but not to be proſecuted both on this and the former act. And by 28 *G.* 3. *c.* 37. *ſ.* 15. the ſame ſhall be forfeited, and may be ſeized by any officer.

Ingots to be weighed.

Every ingot or bar of ſilver, deſigned for gilt wire, ſhall be weighed in the preſence of the exciſe officer, who attends the forge where they are made, before they be covered with gold; and ſhall be weighed in preſence of and marked by the ſaid officer, after the gold is laid on; and on refuſal to admit the officer, the refiner or maker ſhall forfeit 20l. half to the king, and half to him that ſhall ſue. 15 *G.* 2. *c.* 20. *ſ.* 8, 9.

Allowance for waſte.

If the officer's charge be made, by taking the weight of the gold and ſilver in big wire at the bar-houſe, an allowance of one fifth part ſhall be made, in conſideration of the waſte, in reducing the ſame to ſmall wire. 10 *An.* *c.* 26. *ſ.* 53.

Removing before ſurveyed.

No wire-drawer ſhall (on pain of 40l.) remove any gilt or ſilver wire, of which no account hath been taken, from the bar-houſe or place of making, without giving to the officer 24 hours' notice. *ſ.* 56.

Wire unſurveyed to be kept ſeparate.

Wire not ſurveyed ſhall be kept ſeparate from that which hath been ſurveyed, for 24 hours after making, unleſs it ſhall be ſooner ſurveyed; on pain of 10l. *ſ.* 57.

Concealing.

If the maker, or he for whom it is made, ſhall conceal any wire, or bars of ſilver prepared for making it; he ſhall forfeit 20l. *ſ.* 58.

Entry of wire made.

The maker ſhall once in every month make entry in writing at the next office, of all the wire by him made, ſetting forth the weight, and kinds, and how much was made in each week; on pain of 100l. Which entry ſhall be made on the oath of the maker, or his chief workman, to the beſt of his knowledge and belief, to be adminiſtered by the officer. *ſ.* 50.

Payment of the duty.

And the duty ſhall be cleared off in ſix weeks after entry, on pain of double duty. *ſ.* 51.

Exportation.

If any perſon ſhall export any gold or ſilver thread, or lace or fringe made of plate wire, ſpun upon ſilk, he ſhall

have a drawback after the rate of 5s. a pound averdupois, of such silver thread, lace, or fringe, and of 6s. 8d. a pound of such gold thread, lace, or fringe. *s.* 62.

Power of the justices.

All the powers of the excise laws shall be in force for managing these duties; and the penalties and forfeitures (not herein otherwise directed) shall be sued for, levied, and mitigated, as by the laws of excise, or in the courts at *Westminster*; and be employed, half to the use of the king, and half to him that shall inform or sue. 10 *An.* *c.* 26. *s.* 64. 24 *G.* 2. *c.* 40. *s.* 29. 24 *G.* 3. *sess.* 2. *c.* 41.

Utensils liable.

And all such wire, materials, and utensils, in custody of any maker, or other to his use, shall be liable to the duties and penalties; and such proceedings may be had thereupon, as if such debtor or offender were the lawful owner. 10 *An.* *c.* 26. *s.* 60. 28 *G.* 3. *c.* 37. *s.* 21.

For regulations concerning the true making of gilt and silver wire (which do not belong to this place) see the act of 15 *G.* 2. *c.* 20. and 28 *G.* 3. *c.* 37.

And for prohibiting the selling or working up of foreign gold or silver lace or thread, see the 22 *G.* 2. *c.* 36.

A. Information before one justice upon 9 *G.* 2. *c.* 35. *s.* 21. for carrying run or prohibited goods, liable to the duties of customs or excise.

Westmorland. *BE it remembered that on the —— day of ——, in the —— year of the reign of our sovereign lord* George *the third, now king of* Great Britain, *&c. and in the year of our Lord one thousand seven hundred and —— at —— in the said county*; A. I. *of —— in the said county, ——, who prosecutes as well for the poor of the said parish of —— in the said county, as for himself, in this behalf, in his proper person cometh before me* J. P. *esquire, one of the justices of our said lord the king assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and as well for the poor in the said parish of —— in the said county, as for himself, giveth me the said justice to understand and be informed, that after the 24th day of* June 1736, *to wit, on the —— day of ——, in the year of our Lord one thousand seven hundred and ——, at the parish of —— in the said county, one —— being one of his majesty's officers*

officers of the customs [or *excise*], *did find and seize upon and in the custody of one* A. O. *late of* —— *in the said county, divers, to wit* [here set forth the goods found and the value thereof], *being goods, wares, and merchandize liable to the payment of the duties of customs* [or *excise*] *to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of —— aforesaid, without payment of the said duties for the same; and that the said* A. O. *was at the time of such finding and seizing of the said goods, wares, and merchandize, at the parish aforesaid, employed, in carrying the same, he the said* A. O. *then and there well knowing the said goods, wares, and merchandize, to have been clandestinely run and imported as aforesaid, without payment of the said duties of customs* [or *excise*], *contrary to the form of the statute in such case made and provided; whereby, and by force of the said statute, the said* A. O. *hath forfeited the sum of —— pounds, being treble the value of the said goods, wares, and merchandize, so found and seized as aforesaid; one moiety thereof to the said* A. I. *the said informer, and the other moiety thereof to the poor of the parish of ——, being the parish where the said offence was committed; and the said* A. I. *who prosecutes as aforesaid, prays that the said* A. O. *may be convicted of the said offence; and that one moiety of the said forfeiture may be adjudged to the said* A. I. *and the other moiety thereof to the poor of the said parish of ——, according to the form of the statute in such case made and provided; and that the said* A. O. *may be summoned to answer the said complaint and information, and to make defence thereto.*

Before me, J. P. A. I.

B. Summons before one justice upon the 9 *G.* 2. *c.* 35. *s.* 21. for carrying run or prohibited goods.

Westmorland. { To A. O. of —— in the said county, ——.

WHEREAS an information hath this day been made by A. I. *of —— in the said county, ——, who prosecutes as well for the poor of the said parish of ——, as for himself, in this behalf, before me* J. P. *esquire, one of the justices*

justices of our lord the now king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, setting forth, that after the 24th day of June 1736, *to wit, on the —— day of —— in the year of our Lord ——, at the parish of —— in the said county, one* A. I. *being one of his majesty's officers of the customs* [or *excise*], *did find and seize upon and in the custody of you,* A. O. *late of —— in the said county* [here set forth the goods found and the value thereof], *being goods, wares, and merchandize liable to the payment of the duties of customs* [or *excise*] *to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of —— aforesaid; and that you the said* A. O. *was, at the time of such finding and seizing of the said goods, wares, and merchandize at the parish aforesaid, employed in carrying the same, you the said* A. O. *then and there well knowing the same goods, wares, and merchandize, to have been clandestinely run and imported as aforesaid, without payment of the said duties of customs* [or *excise*], *contrary to the form of the statute in such case made and provided; whereby, and by force of the said statute, you the said* A. O. *hath forfeited the sum of —— pounds, being treble the value of the said goods, wares, and merchandize, so found and seized as aforesaid; one moiety thereof to the said* A. I. *the said informer, and the other moiety thereof to the poor of the said parish of ——* [or as the case may be], *and praying that you the said* A. O. *may be convicted of the said offence, and that one moiety of the said forfeiture may be adjudged to the said* A. I. *and the other moiety thereof to the poor of the said parish of ——* [or as the case may be], *according to the form of the statute in that case made and provided; these are therefore to require you the said* A. O. *to appear before me at the house of —— in —— in the said county, on —— the —— day of —— next ensuing, at the hour of —— in the —— noon of the same day, to answer the matter of complaint contained in the said information, and to shew cause (if any you have) why you should not be convicted of the said offence charged in the said information. Given under my hand and seal the —— day of —— in the year of our Lord ——.*

C. Con-

C. Conviction of a person before one justice on 9 G. 2. c. 35. s. 21. for carrying run or prohibited goods.

Westmorland. *BE it remembered, that on the —— day of —— in the —— year of the reign of our sovereign Lord* George *the third, king of* Great Britain, *and so forth, and in the year of our Lord* ——, *at —— in the said county,* A. I. *of —— in the said county, ——, who prosecutes as well for —— as for himself, in this behalf, in his proper person cometh before me* J. P. *esquire, one of the justices of our said lord the king assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine di ers felonies, trespasses, and other misdemeanors, in the said county committed; and as well for —— as for himself, giveth me the said justice to understand and be informed, that after the 24th day of* June 1726, *to wit, on the —— day of ——, in the year of our Lord ——, at the parish of —— in the said county one* A. I. *being one of his majesty's officers of the customs* [or *excise*], *did find and seize upon and in the custody of* A. O. *late of —— in the said county,* [here set forth the goods found and seized], *of great value, to wit, of the value of —— pounds of lawful money of* Great Britain, *being goods, wares and merchandizes, liable to the payment of the duties of customs* [or *excise*], *to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of —— aforesaid; and that the said* A. O. *was, at the time of such finding and seizing of the said goods, wares, and merchandizes, at the parish aforesaid, employed in carrying the same, he the said* A. O. *well knowing the same goods, wares, and merchandizes, to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and provided: whereby and by force of the said statute, the said* A. O. *hath forfeited the sum of —— pounds, being treble the value of the said goods, wares, and merchandizes, so found and seized as aforesaid, one moiety thereof to the said* A. I. *the said informer, and the other moiety thereof to ——: and the said* A. I. *who prosecutes as aforesaid, prays that the said* A. O. *may be convicted of the said offence, and that one moiety of the said forfeiture may be adjudged to the said* A. I. *and the other moiety*

moiety thereof to ——, *according to the form of the ſtatute in that caſe made and provided:* [*And afterwards on the* —— *day of* ——, *in the year aforeſaid, at the pariſh of* —— *aforeſaid, in the county aforeſaid, the ſaid* A. O. *having been previouſly duly ſummoned to appear before me the ſaid* J. P. *ſo being ſuch juſtice as aforeſaid, at this time and place to anſwer the matter of complaint contained in the ſaid information (which is now duly proved before me upon the oath of* ——); if the defender does not appear, ſay, (*a*),] *and the ſaid* A. O. *being now here ſolemnly called, does not appear, but therein makes default, and does not make any defence to the ſaid charge contained in the ſaid information. Whereupon I the ſaid* J P. *ſo being ſuch juſtice as aforeſaid, do now proceed to examine into the truth of the ſaid complaint contained in the ſaid information; and thereupon, on the ſame day and year laſt aforeſaid, at the pariſh of* —— *aforeſaid, in the county aforeſaid, one* A. W. *a credible witneſs in this behalf, cometh before me the ſaid juſtice, in his proper perſon, and on his corporal oath upon the holy evangeliſts of God, now adminiſtered to him by me the ſaid juſtice (I the ſaid juſtice having competent power and authority to adminiſter the ſaid oath to the ſaid* —— *in this behalf), he the ſaid* —— *depoſeth and ſaith, that* [here ſet forth the time, place, and manner of ſeizure, the circumſtances to prove the goods to be run goods, *&c.* and the want of a permit where a permit is required, is a material one: alſo the circumſtances to prove that the defendant knew them to be run goods, *&c.* and the value of the goods]. *And alſo on the ſame* —— *day of* ——, *in the year of our Lord* —— *aforeſaid, at* —— *aforeſaid, one* B. W. *another credible witneſs, comes before me the ſaid juſtice, and on his corporal oath upon the holy evangeliſts of God, now adminiſtered to him by me the ſaid juſtice, depoſeth and ſaith, that* [here ſet forth his evidence]. *Whereupon all and ſingular the premiſes being conſidered, and mature deliberation being thereupon had, it manifeſtly appears to me the ſaid juſtice, that the ſaid* A. O. *is guilty of the premiſes above charged upon him, in manner and form as in and by the ſaid information is alledged: it is therefore adjudged by me the ſaid juſtice, that the ſaid* A. O. *be convicted, and he is hereby convicted by me the ſaid juſtice of the ſaid offence, charged upon him in and by the ſaid information, according to the form of the ſtatute in that caſe made and provided: and I do award and adjudge, that the ſaid* A. O. *for his ſaid offence, hath forfeited, and do forfeit the ſum of* —— *pounds of lawful money of* Great Britain, *being treble the value of the ſaid goods, wares, and merchandizes,*

dizes, ſo found and ſeized as aforeſaid, to go and be diſtributed, one moiety thereof to —— and the other moiety thereof to the ſaid A. I. *the ſaid informer, according to the form of the ſtatute in that caſe made and provided. In witneſs whereof, I the ſaid juſtice to this record of conviction have put my hand and ſeal, at the pariſh of —— aforeſaid, in the county aforeſaid, the ſaid —— day of ——, in the ſaid —— year of the reign of our ſaid ſovereign lord king* George *the third,* &c. *and in the year of our Lord ——.*

(*a*) If the defender appears and defends, ſay,

And afterwards, on the —— day of ——, in the year aforeſaid, at the pariſh of —— aforeſaid, in the county aforeſaid, he the ſaid A. O. *perſonally appearing and being preſent before me, in purſuance of my ſummons iſſued for that purpoſe, is aſked by me if he can ſay any thing for himſelf, why he the ſaid* A. O. *ſhould not be convicted of the premiſes above charged upon him, in form aforeſaid, who pleadeth that he is not guilty of the ſaid offence above charged upon him, in form aforeſaid; whereupon I do now proceed to examine into the truth of the ſaid complaint contained in the ſaid information: and hereupon, on the ſame day and year laſt aforeſaid, at the pariſh of —— aforeſaid, in the county aforeſaid, one* A. W. *a credible witneſs in that behalf, cometh before me the ſaid juſtice in his proper perſon, and on his corporal oath upon the holy evangeliſts of God, now adminiſtered to him by me the ſaid juſtice (I the ſaid iuſtice having competent power and authority to adminiſter the ſaid oath to the ſaid —— in this behalf), he the ſaid —— depoſeth and ſaith in the preſence and hearing of the ſaid* A. O. *that* [here ſet forth the evidence, and if the witneſs is croſs-examined, add ſuch croſs-examination]; *and alſo on the ſame —— day of ——, in the year of our Lord —— aforeſaid, at —— aforeſaid, one —— another credible witneſs, cometh before me the ſaid juſtice, and on his corporal oath upon the holy evangeliſts of God, now adminiſtered to him by me the ſaid juſtice, depoſeth and ſaith, in the preſence and hearing of the ſaid* A. O. *that* [here ſtate his evidence; and if the defendant produce any witneſſes, inſert their evidence in the ſame manner].

D. Warrant of distress before one justice, upon 9 G. 2. c. 35. s. 21. for carrying run or prohibited goods.

Westmorland. { To the constable of —— in the said county.

WHEREAS by a certain conviction under my hand and seal, bearing date the —— day of —— in the year of our Lord ——, one A. O. *late of the parish of —— in the said county, was and is duly convicted before me* J. P. *one of the justices of our lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, upon the information of* A. I. *of —— in the said county, ——, who prosecuted as well for —— as for himself, in this behalf, and upon the oath of ——, a credible witness in that behalf, of a certain offence committed by the said* A. O. *for that after the twenty-fourth day of* June 1736, *to wit, on the —— day of ——, in the year of our Lord ——, at the parish of —— in the said county, one —— being one of his majesty's officers of the customs* [if so], *did find and seize upon and in the custody of the said* A. O. [here set forth the goods found and seized], *of great value, to wit, of the value of —— pounds of lawful money of* Great Britain, *being goods, wares, and merchandizes, liable to the payment of the duties of customs* [or *excise*], *which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of —— aforesaid; and for that the said* A. O. *was, at the time of such finding and seizing of the said goods, wares, and merchandizes, at the parish aforesaid, employed in carrying the same, he the said* A. O. *then and there knowing the same goods, wares, and merchandizes, to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and provided; and the said* A. O. *was for his said offence by me adjudged to forfeit the sum of —— pounds of lawful money of* Great Britain, *being treble the value of the goods, wares, and merchandizes, so found and seized as aforesaid, to be distributed, and to go and be applied, one moiety thereof to the said ——, and the other moiety thereof to the said* A. I. *the said informer, according to the form of the statute in such case made and provided. These are therefore to command you to levy the*

ſaid ſum of —— pounds, being treble the value of the ſaid goods, wares, and merchandizes, ſo found and ſeized as aforeſaid, by diſtreſs and ſale of the goods and chattels of the ſaid A. O. *and I do hereby order and direct the goods and chattels ſo to be diſtrained, to be ſold and diſpoſed of within —— (a) days, unleſs the ſaid ſum of —— pounds, for which ſuch diſtreſs ſhall be made, together with the reaſonable charges of taking and keeping ſuch diſtreſs, ſhall be ſooner paid; and you are hereby commanded to certify to me the ſaid juſtice, on the —— day of —— next enſuing, what you ſhall do by virtue of this my warrant. Given under my hand and ſeal at —— aforeſaid, in the county aforeſaid, the —— day of ——, in the —— year of the reign of our ſovereign lord* George *the third, &c. and in the year of our Lord ——.*

Return where no goods can be found, to be indorſed on the back of the warrant.

I Do hereby certify to J. P. *the juſtice within named, that the within-named* A. O. *hath not any goods or chattels whereof I can levy the within-mentioned ſum of —— pounds, or any part thereof, as within I am commanded. Dated this —— day of ——.*

A. C. *Conſtable of —— within-named.*

Return where part is levied.

I Do hereby certify to J. P. *the juſtice within named, that by virtue of the within warrant, I have levied, by diſtreſs and ſale of the goods and chattels of the within-named* A. O. *the ſum of —— pounds, in part of the within-mentioned ſum of —— pounds, which ſaid ſum of —— pounds I have ready before the ſaid juſtice, as within I am commanded; and I do further certify to the ſaid juſtice, that the ſaid* A. O. *hath not any other goods or chattels whereon I can levy the reſidue of the ſaid ſum of —— pounds, or any part thereof. Dated this —— day of ——.*

A. C. *Conſtable of —— within-named.*

(a) By 27 G. 3. c. 20. not more than eight, nor leſs than four days.

E. Com-

E. Commitment by one justice upon 9 G. 2. c. 35. s. 21. for want of distress, (or where part only is levied,) for carrying run or prohibited goods.

Westmorland. { To the constable of —— in the said county, and to the keeper of the house of correction at —— in the said county.

WHEREAS A. O. *late of the parish of* —— *in the said county, on the* —— *day of* —— *last past, was duly convicted before me* J. P. *one of the justices of our lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed; upon the information of* A. I. *of* —— *in the said county,* ——, *who prosecuted as well for* —— *as for himself in this behalf, and upon the oath of* A. W. *a credible witness in that behalf, of a certain offence committed by the said* A. O. *for that after the* 24th *day of* June 173⁶, *to wit, on the* —— *day of* ——, *in the year of our Lord* ——, *at the parish of* —— *in the said county, one* —— *being one of his majesty's officers of the customs* [or *excise*], *did find and seize upon and in the custody of the said* A. O. [here set forth the goods found and seized] *of great value, to wit, of the value of* —— *pounds of lawful money of* Great Britain, *being goods, wares, and merchandizes, liable to the payment of the duties of customs* [or *excise*], *which had been brought from parts beyond the seas, by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, the parish of* —— *aforesaid, and for that the said* O. A. *was, at the time of finding and seizing the said goods, wares, and merchandizes, at the parish aforesaid, employed in carrying the same, he the said* A. O. *then and there well knowing the said goods, wares, and merchandizes, to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and provided; and the said* A. O. *was, for his said offence, by me adjudged to forfeit the sum of* —— *pounds of lawful money of* Great Britain, *being treble the value of the said goods, wares, and merchandizes, so found and seized as aforesaid, to be distributed, and to go and be applied, one moiety thereof to* ——, *and the other moiety thereof to the said* A. I. *the said informer, according to the form of the statute in such case made and provided; and whereas on the* —— *day of* ——

last

last past, in the year aforesaid, I did issue my warrant to the constable of ——, *commanding him to levy the said sum of* ——, *being treble the value of the goods, wares, and merchandizes, so found and seized as aforesaid, by distress and sale of the goods and chattels of him the said* A. O. *and that the said constable should certify to me the said justice, on the* —— *day of* —— *now last past, what he should do by virtue of my said warrant; and whereas it duly appears to me, by the return of* ——, *constable of* —— *aforesaid, dated the said* —— *day of* —— *last past (a), that the said* A. O. *hath not any goods or chattels whereof he could levy the said sum of* ——, *or any part thereof, as by the said warrant is directed;* [(a) or if part is levied, say, after the words "last past," *he hath levied by distress and sale of the goods and chattels of the said* A. O. *the sum of* —— *pounds, in part of the said sum of* —— *pounds; and it further appears to me, by the return of the said constable, that the said* A. O. *hath not any other goods or chattels whereof he could levy the residue of the said sum of* ——, *or any part thereof, as by the said warrant he was commanded.*] *These are therefore to command you the said constable of* —— *aforesaid, to apprehend the said* A. O. *and him safely to convey to the house of correction at* —— *aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said house of correction, to receive the said* A. O. *into the said house of correction, and there to whip him and keep him to hard labour for the space of three months, and for your so doing this shall be your sufficient warrant. Given under my hand and seal, at* ——, *this* —— *day of* —— *in the* —— *year of the reign of his present majesty king* George *the third, and in the year of our Lord* ——.

F. General form of an information or complaint before two justices upon 12 *C.* 2. *c.* 24. *s.* 45.

Westmorland. *BE it remembered, that this* —— *day of* —— *in the* —— *year of the reign of our sovereign lord king* George *the third, at* —— *in the said county, cometh* A. I. *of* —— *gentleman, in his proper person, and as well for our said lord the king, as for himself, exhibiteth to us* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, residing near the place where the offence herein aftermentioned was committed, an information and complaint, and thereby informeth us, that at several times between the* —— *day of* —— *and the* ——

day of ——— [or *on the* —— *day of* ——— as the case may be] *now last past, one* A. O. *of the parish of* ——— *in the said county, yeoman, did* [here set forth the offence], *contrary to the form of the statute in such case made and provided, whereby he hath forfeited the sum of* ——— [here set forth the forfeiture]; *and thereupon the said* A. I. *who as well for his said majesty as for himself doth prosecute, humbly prays the judgment of us the said justices in the premises, and that he may have one moiety* [or as the case may be] *of the said forfeiture, according to the form of the statute in such case made and provided: and that the said* A. O. *may be summoned to answer the said premises, and to make defence thereto before us the said justices.* A. I.

Exhibited before us the day and year first above-written, J. P.
K. P.

G. General form of a summons upon 12 *C.* 2. *c.* 24. *s.* 45.

Westmorland. { To *A. O.* of ——— in the said county, yeoman.

WE J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, do hereby give you notice, that* A. I. *of* ——— *gentleman, hath this day exhibited before us an information against you, for the sum of* —— [here set forth the forfeiture] *by you incurred, for and by reason of your* [here set forth the offence], *contrary to the form of the statute in such case made and provided: you are therefore hereby required to appear before us at the house of* —— *known by the sign of the* —— *in* ——— *in the said county, on the* —— *day of* —— *now next ensuing, at* —— *of the clock in the* —— *noon of the same day, then and there to answer to the said information, and to make defence thereto; but if you neglect to appear, we shall proceed as if you were personally present. And we do further authorise and require Mr.* O. X. *officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place aforesaid, then and there to make a return thereof to us the said justices. Given under our hands the* —— *day of* ——— *in the year of our Lord* ———.

H. Form

H. Form of a record of conviction upon 12 C. 2. c. 24. s. 45.

Westmorland. *BE it remembered, that on this —— day of ——— in the —— year of the reign of our sovereign lord* George *the third, now king of* Great Britain, *at ——— in the said county,* A. I. *one of his said majesty's collectors of excise* [or whoever is the informer], *in his proper person cometh before us* J. P. *and* K. P. *esquires, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and as well for our said lord the king as for himself in this behalf, giveth us the said justices to understand and be informed, that* A. O. *of ——— in the said county, ———, within the space of ——— now last past, that is to say, on the —— day of ——— at the parish of ——— in the said county, did* [here set forth the offence], *contrary to the form of the statute in that case made and provided, whereby, and by force of the said statute, the said* A. O. *hath forfeited for his said offence the sum of —— pounds, one moiety thereof (all necessary charges for the recovery thereof being first deducted) to his majesty, and the other moiety thereof to the said* A. I. [or as the case may be]; *and the said* A. I. *prays, that the said* A. O. *may be convicted of the said offence, according to the statute in that case made and provided; and afterwards, on the ——— day of ——— in the ——— year of the reign of our said lord the now king, at ——— aforesaid, the said* A. O. *having been previously summoned, in pursuance of our summons issued for that purpose, to appear before us the said justices, to answer and make defence to the matters contained in the said information (a), appeareth and is present before us the said justices, and having heard the same, he is asked by us the said justices, if he can say any thing for himself why he should not be convicted of the said offence wherewith he is charged in manner aforesaid; and thereupon he the said* A. O. *says, that he is not guilty of the said offence, whereupon we the said* J. P. *and* K. P. *so being such justices as aforesaid, do now proceed to examine into the truth of the said complaint contained in the said information, in the presence and hearing, as well of the said* A. I. *as of the said* A. O. *and thereupon, on the same day and year last mentioned, at ——— aforesaid, in the county aforesaid,* A. W. *a credible witness in this behalf, comes in his proper person be-*

fore us the said justices, to prove the said charge contained in the said information against the said A. O. *and is now here by us the said justices sworn, and does before us the said justices take his corporal oath upon the holy gospel of God to speak the truth, the whole truth, and nothing but the truth, of and concerning the matters contained in the said information, we having administered, and having a competent power to administer such oath to him in that behalf; and the said* A. W. *being so sworn, does on his said oath say and depose, in the presence and hearing of the said* A. O, *that on the —— day of ——* [here state the offence as proved by the witness]; *and the said* A. O. *does not produce any evidence to contradict the proof aforesaid: wherefore it manifestly appears to us the said justices, that the said* A. O. *is guilty of the offence charged upon him by the said information; it is therefore considered and adjudged by us the said justices, that the said* A. O. *be convicted, and he is accordingly convicted of the said offence charged upon him by the said information; and we do hereby adjudge that the said* A. O. *for the said offence, hath forfeited the sum of —— l. of lawful money of* Great Britain, *but we do mitigate the same to the sum of —— l. and do adjudge and order that the said* A. O. *do pay the said sum of —— l. to be distributed as the law directs. In witness whereof, we the said justices to this present conviction have set our hands and seals, at —— in the said county, the —— day of —— in the year of our Lord ——.*

(*a*) If the defendant does not appear, say,

And the said A. O. *being now here solemnly called, does not appear, but therein makes default, and does not make any defence to the said charge contained in the said information, whereupon we the said* J. P. *and* K. P. *so being such justices as aforesaid, do now proceed to examine into the truth of the said complaint contained in the said information; and thereupon, on the same day and year last aforesaid, at the parish of —— aforesaid, in the county aforesaid, one* A. W. *a credible witness in this behalf, cometh before us the said justices, in his proper person, and on his corporal oath upon the holy evangelists of God, now administered to him by us the said justices, (we the said justices having competent power and authority to administer the said oath to the said* A. W. *in this behalf,) he the said* A. W. *deposeth and saith* [here state the offence as proved by the witness]; *whereupon all and singular the premises being considered, and mature deliberation being thereupon had, it manifestly,* &c.

I. War-

I. Warrant of distress for a penalty, upon 12 C. 2. c. 24. s. 45.

Westmorland. { To *O. X.* and *P. X.* officers of excise, and to either of them.

WE whose hands and seals are hereunto set, two of his majesty's justices of the peace in and for the said county, do in his said majesty's name authorise and command you, or one of you, that you seize upon the goods and chattels [or *utensils*, &c. as the case may be] *of* A. O. *of* ——— *in the county aforesaid,* ———, *and levy the sum of* ——— *l. of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* ——— *l. of like lawful money* [if the case be so], *recovered against him by* A. I. *gentleman, who prosecuted as well for our sovereign lord the king as for himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he the said* A. O. *is duly convicted before us, and for the levying thereof you are to seize, take, and carry away the goods and chattels* [or *utensils*, &c.] *aforesaid, and if in* —— *days* [not less than four, nor more than eight days] *next after such seizure, the said sum of* —— *together with the reasonable charges of taking and keeping the said goods and chattels* [or *utensils*, &c.] *shall not be paid; then and in such case, after the expiration of the said* —— *days, you are to make sale thereof, or of so much thereof as shall be sufficient to levy the said sum of* ——— *l. which, when so levied, you are forthwith to pay to the collector of excise of the district for the time being* [or as the case may require], *to be by him distributed according to the statute in such case made and provided. And if any overplus shall remain of the money arising by such sale, you are to render such overplus to the said* A. O. *the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case sufficient distress cannot be found whereon to levy the said sum of* ——— *you are forthwith to certify the same unto us, together with a return of this precept. Given under our hands and seals the* —— *day of* ——— *in the year* ———.

A return of want of sufficient distress to be indorsed on the back of the warrant.

Westmorland. I O. X. *one of the within-named officers of excise, do hereby certify to* J. P. *and* K. P. *esquires, the justices within mentioned, that by virtue of the within warrant, I have made diligent search for the goods and chattels* [or *utensils*, &c.] *of the within-named* A. O. *and that I can find none; and that I do not know nor can find that the said* A. O. *hath any goods or chattels* [or *utensils*, &c.] *whereon the within sum of* —— *may be levied. As witness my hand, the* —— *day of* —— *in the year* ——.

K. Commitment for want of distress, upon 12 *C.* 2. *c.* 24. *s.* 45.

Westmorland. { To *O. X.* and *P. X.* officers of excise and to either of them, and to the keeper of the common gaol at —— in the said county.

WHEREAS we whose hands and seals are hereunto set, two of his majesty's justices of the peace in and for the said county, by our warrant under our hands and seals bearing date the —— day of —— now last past, did require and command you the said O. X. *and* P. X. *or one of you, to levy the sum of —— l. therein mentioned, upon the goods and chattels* [or *utensils*, &c. as the case may be] *of* A. O. *of —— in the said county,* ——. *And whereas you the said* O. X. *by a return and certificate under your hand bearing date the —— day of —— now last past, have certified to us, that diligent search hath been made for such goods and chattels* [or *utensils*, &c.], *but that you can find none whereon to levy the said sum of —— l. or any part thereof. We the said justices do therefore in his said majesty's name, require and command you the said* O. X. *and* P. X. *or one of you, to take the body of the said* A. O. *and him forthwith to carry to the common gaol at —— in the said county, and there to deliver him into the custody of the keeper of the said common gaol, together with this warrant; and we the said justices do hereby also command you the said keeper of the said common gaol, to receive into and safely keep in your custody in the said common gaol, the body of the said* A. O. *until he shall pay the said sum of —— l. of lawful money of* Great Britain, *by us mitigated and lessened from the sum of —— l.*

—— *l. of like money by us the said justices adjudged against him, upon an information exhibited against him before us by* A. I. *gentleman, as well on behalf of his said majesty as of himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables and other peace officers of the said county, are hereby required to be aiding and assisting to you in the due execution hereof; and for so doing this shall be to you, or any of you, a sufficient warrant and authority. Given under our hands and seals the —— day of ——— in the year of our Lord ———.*

L. Form of a summons for witnesses, upon 7 & 8 *W. c.* 30. *s.* 24.

Westmorland. To *A. W.* of ——

WHEREAS we whose hands and seals are hereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that A. O. *of —— in the said county, ———, did on the —— day of ——— now last past* [here set forth the offence], *and that you the said* A. W. *are a material witness to be examined concerning the same: These are therefore to command and strictly enjoin you the said* A. W. *that all and singular business and excuses being laid aside, you be and appear in your proper person before us, at the house of ——— at the sign of —— in —— in the said county, on —— the —— day of —— now next ensuing, at the hour of —— in the —— noon of the same day, to testify the truth and what you know concerning the premises; and this you are by no means to omit, under the penalty that will thereon ensue. Given under our hands and seals,* &c.

M. Form of an information against several victuallers in arrears, &c. for double duties forfeited for not paying single duties.

[PRoceed as at (F.) *ante*, till where the offence is directed to be set forth, and then say,] *That the several and respective persons hereafter named, in the first column here under-written, at several times between the —— day of ——— and the —— day of ——— both now last past, in the said county, that is to say, at the several towns and places hereafter mentioned in the said first column hereafter written, and the re-*

ſpective brewhouſes, and places of brewing, by them the ſaid perſons ſeverally and reſpectively uſed at the ſaid reſpective time and times, place and places, and to them there ſeverally and reſpectively at the ſaid time and times belonging, did ſeverally and reſpectively brew the ſeveral and reſpective quantities of beer and ale, each above ſix ſhillings the barrel, commonly called ſtrong beer and ale, and alſo of beer not above ſix ſhillings the barrel, commonly called ſmall beer, hereafter reſpectively written againſt each of their reſpective names in the two next columns; and that they the ſaid ſeveral perſons, at and during the reſpective time and times of ſuch their reſpective brewing the ſaid reſpective quantities of beer and ale, and of every part thereof reſpectively, were, and yet are at the ſaid reſpective towns and places, victuallers, and tappers out, and ſellers of beer and ale, whereby, and by virtue of ſeveral ſtatutes in ſuch caſe made, there did accrue and become due to his ſaid majeſty from them reſpectively, for and in reſpect of the ſaid reſpective quantities of beer and ale ſo by them reſpectively brewed as aforeſaid, certain rates, duties, and ſums of money reſpectively, amounting to the ſeveral ſums of lawful Britiſh *money hereafter expreſſed in the fourth column, hereafter written againſt each of their names reſpectively, which ſaid rates, duties, and ſums of money, ſo accrued and become due from them reſpectively as aforeſaid, they the ſaid ſeveral and reſpective perſons, according to ſeveral and reſpective ſtatutes in ſuch caſe made, ought reſpectively to have paid and cleared off, to or for the uſe of his ſaid majeſty, within one month next after they reſpectively did make, or ought to have made their reſpective entry or entries of the ſaid beer and ale, ſo by them reſpectively brewed as aforeſaid, or of any part thereof, or at any time ſince; but the ſaid ſeveral and reſpective perſons have wholly omitted and neglected to pay and clear off the ſame and every part thereof, contrary to the form of the ſaid reſpective ſtatutes; whereby they reſpectively have forfeited double the value of the ſaid reſpective rates, duties, and ſums of money by them reſpectively neglected and omitted to be paid as aforeſaid, which ſaid double values of the ſaid reſpective duties and ſums of money, do amount to the ſeveral ſums of money hereafter expreſſed, in the fifth column hereafter written; and thereupon the ſaid* A. I. *who as well,* &c.

1ſt Co-

1st Column	2d Column			3d Column			4th Column			5th Column		
Names of the offenders, and the places of their abode and brewing.	Quantities of strong beer or ale above 6 s the barrel			Quantities of small beer not above 6 s. the barrel.			Sum due for the single duties.			The double value of the said duties.		
	Barrels.	Firkins.	Gallons.	Barrels.	Firkins.	Gallons.	£.	s.	d.	£.	s	d.
Robert Bowness of Orton.	3	1	0	7	2	0	1	6	3	2	12	6
Thomas Holme of ditto.	5	3	0	9	1	0	2	1	1	4	2	2
John Sisson of Febay.	4	1	0	7	3	0	1	11	7	3	3	2
John Noble of Langdale.	6	0	0	4	0	0	1	5	4	3	10	8

[*N. B.* Each offender must have a separate summons, judgment or conviction, warrant of distress, *&c.* (if necessary) which may be easily made out from the forms at letters G. H. I. K.]

N. Form of a conviction of an auctioneer for selling without a licence, on 19 *G.* 3. *c.* 56. *s.* 4.

[PRoceed as in the precedent at letter (H.) *ante*, until where the offence is directed to be set forth, and then say,] *did exercise the business of an auctioneer, and put up to publick sale by way of auction, and did then and there vend and sell by publick sale by way of auction, divers goods and effects, without having first taken out a licence in the manner prescribed by the statute on that case made* [so proceed as in the said precedent to the examination of the witness, and then say,] *that on the —— day of ——— he saw the said* A. O. *exercise the business of an auctioneer in the market-place, in the time of market, in the town of ——— in the county aforesaid, and that the said* A. O. *was then and there putting up and offering goods to public sale by way of auction, and did then and there sell publicly several goods by way of auction and outcry, to the persons then and there assembled, and who were the best and highest bidders for the same; and that he this deponent then and there became the best and highest bidder for, and did accordingly buy of the said* A. O. *by way of auction at the said sale, one lot of goods or wares consisting of —— for which he this deponent paid unto the said* A. O. *the sum of ——* [or as the case may be]. *And the said* A. O. *does not produce any evidence,* &c.

O. Con-

O. Conviction of glass-makers on 19 G. 2. c. 12. s. 19. for double duties.

[PRoceed as in the precedent at letter (H.) *ante*, until where the offence is directed to be set forth, and then say,] A. O., B. O., *and* C. O. *partners at a glass-house, there belonging to, and used by them, did make use of* —— *weight of materials, or metal for making of white or flint glass, and that there did accrue, and become due to his said majesty from the said* A. O., B. O., *and* C. O., *for the duty of the said materials and metal made into glass as aforesaid,* —— *l. of good and lawful money of* Great Britain *which sum so accrued, or any part thereof, the said* A. O., B. O. *and* C. O. *have not paid or cleared off to or for the use of his said majesty, within six weeks next after they, according to the form of the statute, did make or ought to have made their entry or entries of the said materials and metal made into glass as aforesaid, or any part thereof, or at any time since, but the same yet remains wholly due and unpaid, contrary to the form of the statute,* &c. *whereby they have forfeited double the value of the said duty remaining unpaid as aforesaid, that is to say,* —— *l. of like lawful money, and thereupon the said* A. I. *prays, that the said* A. O., B. O., *and* C. O. *may be convicted*; [so proceed as in the said precedent to the examination of the witnesses, and then say,] *that he the said* A. W. *being officer of excise, did, between the* —— *day of* —— *and the* —— *day of* ——, *in the said* —— *year of the reign,* &c. *survey the materials or metals in the glass-house of the said* A. O., B. O., *and* C. O. *in the parish of* —— *in the county aforesaid, and that the said* A. O., B. O., *and* C. O. *during the said last-mentioned times, did there make use of* —— *weight of materials or metal, in the making of white or flint glass, and that there did accrue and become due to his said majesty from the said* A. O., B. O., *and* C. O. *for the duty of the said materials and metal made into glass as aforesaid* —— *l. of lawful money of* Great Britain, *which sum so accrued, or any part thereof, the said* A. O., B. O., *and* C. O. *have not paid or cleared off to or for the use of his said majesty within six weeks next after they, according to the form of the statute in that behalf made, did make or ought to have made their entry or entries of the said materials and metal made into glass as aforesaid, or any part thereof, or at any time since, but the same yet remains wholly due and unpaid* [or as the proof may be]. *And thereupon the said* A. O., B. O., *and* C. O. *being called,* &c.

P. Con-

P. Conviction for adulterating hops, on 7 G. 2. c. 19. ſ. 2.

[PROceed as in the precedent at letter (H.) *ante*, until where the offence is to be ſet forth, and then ſay] *did mix with* ——— *weight of hops a certain ingredient, to wit, the vapour of ſulphur and brimſtone, to alter the colour of the ſaid hops, which ingredient then and there did alter the colour of the ſaid hops, againſt the form of the ſtatute in that caſe made and provided; whereby and by force of the ſaid ſtatute the ſaid* A. O. *hath for his ſaid offence forfeited the ſum of five pounds one moiety thereof to our ſaid lord the king, and the other to the ſaid* A. I. *the ſaid informer; and the ſaid* A. I. *prays, &c.* [ſo proceed in the ſaid precedent to the examination of the witneſs, and then ſay,] *that on the* —— *day of* ——— *he the ſaid* A. W. *by the order of the ſaid* A. O. *threw* ——— *pound weight of brimſtone upon the fire which was then uſing for the purpoſe of drying* ——— *weight of hops belonging to the ſaid* A. O. *in a certain hop oſt, ſituate at* ———, *which brimſtone was ſo put on the ſaid fire for the purpoſe of making the ſaid hops have a better colour; and he the ſaid* A. W. *on his oath aforeſaid, ſaith, that the vapour and fume of the ſaid brimſtone aſcended to the hops placed over ſuch fire, and the hops being then in a moiſt ſtate, ſuch fume and vapour ſettled and fixed on the hops and mixed with the ſame, whereby the colour thereof was changed, and the hops appeared brighter than they would have done, if they had not been ſo mixed with the fume and vapour of brimſtone* [or as the proof may be]. *And he the ſaid* A. O. *being called*, &c.

Execution.

WHERE a perſon attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution ſhould not be awarded againſt him; if he deny that he is the ſame perſon, it ſhall immediately be tried by a jury returned for that purpoſe. 2 *Haw. B.* 2. *c.* 51. *ſ.* 3. *& vid. Ratcliff's caſe, Foſter*, 40, 41.

The

The court may command execution to be done, without any writ. *Id. ſ.* 4.

In fixed and ſtated judgments, the law makes no diſtinction between a peer and a commoner, or between a common and ordinary caſe, and one attended with extraordinary circumſtances; for which reaſon it was adjudged in *Felton*'s caſe, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the ſentence that his body ſhould be hanged in chains, but that the body after execution being at the king's diſpoſal, might be hung in chains, or otherwiſe ordered as the king ſhould think fit. 2 *Haw.* 443. V. *Leach's Haw. v.* 2. *p.* 657.

But the king may pardon part of the judgment; as where the judment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading, whereby the judgment is not altered, but part of it remitted. 2 *H. H.* 41. V. *id.*

It is clear that if a man, condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw. B.* 2. *c.* 51. *ſ.* 7.

Exigent. See Proceſs.

Extortion.

IT is ſaid, that extortion, in a large ſenſe, ſignifies any oppreſſion under colour of right; but that in a ſtrict ſenſe, it ſignifies the taking of money by any officer, by colour of his office, either where none at all is due, or not ſo much is due, or where it is not yet due. 1 *Haw.* 170.

And by the ſtatute of the 3 *Ed.* 1. *c.* 26. (which is only in affirmance of the common law) *No ſheriff, nor other the king's officer, ſhall take any reward to do his office, but ſhall be paid of that which they take of the king; and he that ſo doth, ſhall yield twice as much, and ſhall be puniſhed at the king's pleaſure.*

No ſheriff nor other the king's officer] Under theſe words, the law beginning with the *ſheriffs*, are underſtood eſcheators, coroners, bailiffs, gaolers, and other inferior offi-

cers of the king, whoſe offices were inſtituted before the making of this act, which do any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, or for the king's ſervice. 2 *Inſt.* 209.

Alſo the juſtices of the peace, whoſe office was inſtituted after this act, are bound by their oath of office to take nothing for their office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.

And generally, no publick officer ſhall take any other fees or rewards, for doing any thing relating to his office, than ſome ſtatute in force gives him, or elſe as hath been anciently and accuſtomably taken; and if he do otherwiſe he is guilty of extortion. *Dalt. c.* 41.

Shall take any reward] Therefore by this ſtatute, they can at this day take no more for doing their office, than hath been ſince allowed to them by authority of parliament. 2 *Inſt.* 210.

And all preſcriptions which have been contrary to this ſtatute, and to the common law in affirmance of which it is made, have been always holden to be void. 1 *Haw.* 170.

And it has been reſolved, that a promiſe to pay them money for doing of a thing, which the law will not ſuffer them to take any thing for, is merely void. 1 *Haw.* 171.

To do his office] It is not ſaid, that he ſhall take no reward generally, but no reward to do his office: Thus the fee of 20d. called bar fee, time out of mind taken by the ſheriff of every priſoner that is acquitted, is not againſt this ſtatute; for it is not taken for doing his office. 2 *Inſt.* 210.

But there ſeems to be no neceſſity for this diſtinction, for it cannot be intended to be the meaning of the ſtatute to reſtrain the courts of juſtice, in whoſe integrity the law always repoſes the higheſt confidence, from allowing reaſonable fees for the labour and attendance of their officers; for the chief danger of oppreſſion is from officers being left at their liberty to ſet their own rates on their labour, and make their own demands; but there cannot be ſo much fear of theſe abuſes, while they are reſtrained to known and ſtated fees, ſettled by the diſcretion of the courts, which will not ſuffer them to be exceeded, without a proper reſentment. 1 *Haw.* 171.

But in the eccleſiaſtical court, a perſon was libelled againſt for fees, and upon motion a prohibition was granted, for

for that it was holden that no court had a power to eſtabliſh fees: the judge of a court may think them reaſonable, but that is not binding; but if on a *quantum meruit* a jury think them reaſonable, then they become eſtabliſhed fees. 1 *Salk.* 333.

The fee, in ſeſſions, for traverſing, trying, or diſcharging indictments, diſcharging recognizances, and the like, do vary according to the different cuſtoms in different places. *Dalt. c.* 41.

Shall yield twice as much] At the common law this offence is ſeverely puniſhable at the king's ſuit, by fine and impriſonment, and alſo by a removal from the office in the execution whereof it was committed. And this ſtatute doth add a greater penalty than the common law did give; for hereby the plaintiff ſhall recover his double damages. 2 *Inſt.* 210. 1 *Haw.* 171.

And by the 31 *El. c.* 5. Actions for extortion may be laid in any county.

At the king's pleaſure.] That is, by the king's juſtices, before whom the cauſe depends. 2 *Inſt.* 210.

Indictment for extortion in a gaoler.

THE jurors for our lord the king upon their oath preſent that A. O. *late of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* —— *was taken upon ſuſpicion of having committed a certain felony, by* ——— *conſtable of* ——— *in the ſaid county, by virtue of a warrant directed to the ſaid* ——— *under the hand and ſeal of Sir* William Dalſton, *knight, then and yet one of the juſtices of our ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and was, on the ſame day in the year aforeſaid, committed by him the ſaid Sir* William Dalſton, *to* A. G. *keeper of the gaol of our ſaid ſovereign lord the king at* —— *in the ſaid county, under the cuſtody of him the ſaid* A. G. *to be ſafely kept, upon ſuſpicion of the felony aforeſaid, and the ſaid* A. O. *was detained in that priſon under the cuſtody of the ſaid* A. G. *from the time that he was committed to the ſaid priſon for one month from thence next enſuing, upon ſuſpicion of the ſaid felony; neverthleſs the ſaid* A. G. *in no wiſe regarding the ſtatute in that caſe made, and the penalty therein contained, did on the* ——— *day of* —— *at* ——— *aforeſaid, in the ſaid county, demand and receive* ——— *pounds of lawful money of* Great Britain *of and from the ſaid* A. O. *for eaſe and favour in the ſaid gaol for the ſaid time, in contempt of our ſaid ſovereign lord the king, and againſt*

againſt the form of the ſtatute aforeſaid, and againſt the peace of our ſaid ſovereign lord the king, his crown and dignity.

Indictment for extortion of a bailiff.

THE jurors for our lord the king upon their oath preſent, that A. B. *late of* ——— *in the ſaid county, yeoman, being bailiff of the hundred of* ——— *in the ſaid county, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *in the ſaid county, by pretext and colour of his ſaid office, did unjuſtly and by extortion take and extort* 5 s. *of one* A. I. *of* ——— *in the ſaid county, yeoman, one of the freeholders qualified to ſerve upon juries in the ſaid county, to excuſe the ſaid* A. I. *from attending or appearing at the aſſizes that were then next to be holden in and for the ſaid county, when in fact, the ſaid* A. I. *was not returned by the ſheriff of the ſaid county in any panel of jurors, and alſo when indeed no ſuch ſum of money was due to the ſaid* A. B. *for his fee for excuſing the attendance or appearance of the ſaid* A. I. *at the aſſizes aforeſaid, to the evil example of other offenders, to the great damage of him the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Falſe tokens. See Cheat.

Faſt days.

BY the 2 & 3 *Ed.* 6. *c.* 19. for the encouragement of the fiſheries, and the increaſe of cattle; and the 5 *El. c.* 5. intituled, an act touching political conſtitutions for the maintenance of the navy; and by the 35 *El. c.* 7. it is enacted as follows:

No perſon ſhall eat any manner of fleſh on any *Friday* or *Saturday*, or the embring days, or in *Lent*, nor on any other day commonly reputed a fiſh day; on pain of forfeiting 20s. or being impriſoned one month.

And every perſon in whoſe houſe any fleſh ſhall be eaten on fiſh days, and not diſcloſing the ſame to a publick officer having authority to puniſh the ſame, ſhall forfeit 13 s. 4 d.

Which ſaid forfeitures ſhall be, one third to the king, one third to the informer, and one third to the common

uſe of the pariſh where the offence ſhall be committed; to be levied by the churchwardens after conviction.

Proſecution to be at the aſſizes or ſeſſions, in three months after the offence committed.

But nothing herein ſhall extend to any perſon having the king's licence; or being in great age, and weakneſs thereby, or ſick, or notably hurt; or a woman with child, or lying in child-bed, for eating of ſuch one kind of fleſh as ſhe ſhall have great luſt unto; or in priſon; nor to the king's lieutenant, deputy, or captain in his armies, but the ſame may eat, or licenſe his ſoldiers to eat fleſh for lack of other victual; nor to perſons licenſed by the archbiſhop of *Canterbury*.

And ſuch licences ſhall be on condition, that the perſon licenſed ſhall within ſix days after *Candlemas*, pay to the poor box where he dwells, if he be a lord 26 s. 8 d. a knight 13 s. 4 d. and all others 6 s. 8 d.

But ſick perſons may be licenſed by the biſhop of the dioceſe, or by the parſon, vicar, or curate of the pariſh, or (if there be none, or he be wilful) of the next pariſh, and if the ſickneſs continues above eight days, the licence ſhall be regiſtered in the church book, with the knowledge of a churchwarden; and the curate ſhall have 4 d. for entry; and the ſame to endure no longer than ſuch ſickneſs.

And no licence ſhall extend to the eating any beef at any time of the year, nor veal from *Sept.* 29, to *May* 1, in any year.

And perſons licenſed (except for ſickneſs) ſhall for every diſh of fleſh at their table, have one diſh of ſea fiſh.

Fees. See Extortion.

Felo de ſe. See Homicide.

Felony, Miſpriſion of Felony, and Theftbote.

I. Felony (*a*).

FELONY is ſuppoſed by ſome to come from the Saxon *fel*, which ſignifieth fierce or cruel; of which the verb *fe l* ſignifieth to throw down or demoliſh; and the ſubſtantive of that name is uſed to ſignify a mountain rough and uncultivated. But the ſame word, with a little variation, runneth through moſt of the *European* languages, and ſignifieth more generally an offence at large; and the Saxon word *fællan* ſignifieth to offend, and *fellniſſæ* an offence or failure; and although *felony*, as it is now become a technical term, ſignifieth in a more reſtrained ſenſe an offence of an high nature, yet it is not limited to *capital* offences only, but ſtill retaineth ſomewhat of this larger acceptation; for petit larceny is felony, although it is not capital.

According to Sir *Henry Spelman*'s obſervation, it ſignifies ſuch an offence, for which during the feudal inſtitution, a man ſhould loſe or forfeit his eſtate; which he derives of two northern words, *fee*, which ſignifies the fief, feud, beneficiary eſtate, and *lon*, which ſignifies price or value.

It would ſwell this title near to the bigneſs of half the book, to ſet down every thing which may be comprehended under the word *felony*: therefore it is neceſſary to refer the conſideration of the ſeveral particular kinds of felonies to their reſpective titles; as for inſtance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and eſpecially the law relating to ſtolen goods of all kinds belongs to title *Larceny*.

The method of bringing a felon to juſtice from the firſt commiſſion of the felony, to his condemnation, and execution, is treated of under the ſeveral titles of *Hue and Cry*, *Arreſt*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Confeſſion*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Execution*. And the

(*a*) Felons eſcaping from *England* to *Scotland*, or from *Scotland* to *England*: For the manner of apprehending them, ſee Northern Borders.

courſe and whole procedure of trying an offender, is treated of under the title *Seſſions*.

And the method of confining offenders to hard labour in penitentiary houſes, or in veſſels upon navigable rivers, inſtead of tranſportation, is treated of under the title *Tranſportation*.

So that there is nothing left for this place, but to take notice of one circumſtance which is common to all felonies in general, and that is, concerning the charges of commitment, proſecution, conviction, or diſcharge.

Charges of carrying to gaol.

By the 3 *J. c.* 10. The felon ſhall pay the charges of his carrying to gaol, if able; to be levied by diſtreſs by warrant of one juſtice.

And by the 27 *G.* 2. *c.* 3. if he is not able, the ſame ſhall be paid by order of ſuch juſtice, by the treaſurer out of the county rate; and in *Middleſex* by the overſeers of the poor where the party was apprehended.

Charges of proſecution.

By the 25 *G.* 2. *c.* 36. The court before whom any perſon hath been tried and convicted of any grand or petit larceny, or other felony, may at the prayer of the *proſecutor*, and on conſideration of his circumſtances, order the treaſurer of the county in which the offence ſhall have been committed, to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble; and the clerk of aſſize, or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on paying 1 s.; and the treaſurer ſhall pay the ſame on ſight, and be allowed the ſame in his accounts.

And by the 18 *G.* 3. *c.* 19. The court before whom any perſon hath been tried and *convicted* of any grand or petit larceny or other felony; or before whom any perſon hath been tried and *acquitted* of any grand or petit larceny or other felony, in caſe it ſhall appear to the ſaid court that there was a reaſonable ground of proſecution, and that the proſecutor had *bona fide* proſecuted;—may order the treaſurer to pay to ſuch proſecutor ſuch ſum as they ſhall think reaſonable, not exceeding the expences he was *bona fide* put unto, making alſo, if he ſhall appear to be in poor circumſtances, a reaſonable allowance for his trouble and loſs of time; which order the clerk of aſſize, or clerk of the peace reſpectively, ſhall forthwith make out and deliver to him, on being paid for the ſame 1 s. and no more; and the treaſurer upon ſight of the order ſhall forthwith pay the ſame. *ſ.* 7.

And

And the juſtices in ſeſſions may lay down or alter, from time to time, ſuch rules and regulations concerning any coſts or charges thereafter to be allowed to any perſon by virtue of this act: which rules and regulations, having received the approbation or ſignature of one or more of the judges of aſſize, ſhall be binding, and not otherwiſe, on all perſons whatſoever. *ſ.* 9.

Charges of witneſſes.

By the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on recognizance to give *evidence*, the court may order the treaſurer to pay him ſuch ſum as they ſhall think reaſonable, for his time, trouble, and expences (whether the perſon hath been convicted or not); which order the proper officer ſhall make out for the fee of 6d. Except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

And by the 18 *G.* 3. *c.* 19. The court, where any perſon ſhall appear on *recognizance* or *ſubpœna* to give evidence as to any grand or petit larceny or other felony, whether any bill of indictment be preferred or not, may order the treaſurer to pay to him ſuch ſum as they ſhall think reaſonable, not exceeding the expences he was *bona fide* put unto, making alſo, if he ſhall appear to be in poor circumſtances, a reaſonable allowance for his trouble and loſs of time; which order the clerk of aſſize, or clerk of the peace reſpectively ſhall forthwith make out and deliver to him, on being paid for the ſame 6d. and no more; and the treaſurer upon ſight of the order ſhall forthwith pay the ſame, (with a like power for the juſtices in ſeſſions to make regulations from time to time, with the approbation of a judge of aſſize, concerning the coſts and charges of witneſſes, in like manner as of proſecutors). *ſ.* 8, 9.

Priſoners acquitted to be diſcharged without fee.

By the 14 *G.* 3. *c.* 20. Every priſoner, charged with any felony or other crime, or as acceſſary thereto, before any court having criminal juriſdiction, againſt whom no bill of indictment ſhall be found, or who ſhall on trial be acquitted, or who ſhall be diſcharged by proclamation for want of proſecution, ſhall be immediately ſet at large in open court, without paying any fee to the ſheriff or goaler; and ſuch fees as had been uſually paid in reſpect of ſuch diſcharge, not exceeding 13s. 4d. for each priſoner, ſhall, on certificate of a judge or juſtice before whom ſuch priſoner ſhall have been diſcharged, be paid out of the general county rate.

II. Miſpriſion of Felony.

Miſpriſion of felony (from the *French* word *meſpris*, a neglect or contempt, 3 *Inſt.* 36.) is the concealing of a felony which a man knows, but never conſented to; for if he conſented, he is either a principal or acceſſary in the felony, and conſequently guilty of miſpriſion of felony, and more. 1 *H. H.* 374.

For it is ſaid, that every felony includes miſpriſion of felony, and may be proceeded againſt as a miſpriſion only, if the king pleaſes. 1 *Haw.* 125.

The puniſhment of miſpriſion of felony in a common perſon, is fine and impriſonment; in an officer, as ſheriff or bailiff of liberties, impriſonment for a year, and ranſom at the king's pleaſure, by the ſtatute of 3 *Ed.* 1. *c.* 9.

If any perſon will ſave himſelf from the crime of miſpriſion, he muſt diſcover the offence to a magiſtrate with all ſpeed that he can. 3 *Inſt.* 140.

Miſpriſion, in a larger ſenſe, is uſed to ſignify every conſiderable miſdemeanor, which hath not a certain name given to it in the law.

III. Theftbote.

Theftbote (from the *Saxon* words *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to proſecute. 1 *Haw.* 125.

But the bare taking of one's own goods again, which have been ſtolen, is no offence, unleſs ſome favour be ſhewn to the thief. *Id.*

This offence is very nearly allied to felony, and is ſaid to have been anciently puniſhed as ſuch; but at this day it is puniſhable only with ranſom and impriſonment, unleſs it were accompanied with ſome degree of maintenance given to the felon, which makes the party an acceſſary after the fact. *Id.*

Information againſt a perſon for felony.

Weſtmorland. *THE information and complaint of* A. I. *of* —— *in the county of* —— *yeoman, made on oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, the* —— *day of* —— *in the year* —— *that yeſterday in the night, or early in the morning*

morning of this day, divers goods of him the ſaid A. I. *to wit,* ——— *have feloniouſly been ſtolen, taken, and carried away from the houſe of him the ſaid* A. I. *at* ——— *aforeſaid, in the county aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect that* A. O. *late of* ——— *yeoman, feloniouſly did ſteal, take, and carry away the ſame:* [Or otherwiſe as the caſe ſhall be:] *And thereupon he the ſaid* A. I. *prayeth that juſtice may be done in the premiſes.*

Before me A. I.
J. P.

Warrant for felony.

Weſtmorland. To the conſtable of ———

FORASMUCH as A. I. *of* ——— *in the county of* ——— *yeoman, hath this day made information and complaint upon oath before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, that this preſent day divers goods of him the ſaid* A. I. *to wit,* ——— *have feloniouſly been ſtolen, taken, and carried away from the houſe of him the ſaid* A. I. *at* ——— *aforeſaid, in the county aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that* A. O. *late of* ——— *yeoman, feloniouſly did ſteal, take, and carry away the ſame:* [Or otherwiſe as the caſe ſhall be:] *Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and to bring him before me to anſwer unto the ſaid information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and ſeal the* ——— *day of* ——— *in the year* ———

The form of a commitment for felony; ſee *Commitment.*

The form of a ſearch warrant for ſtolen goods; ſee *Search Warrant.*

The forms of indictments for ſtolen goods of various kinds are inſerted under the title **Larceny.**

Feme covert. See **Wife.**

Fern: Burning of it in foreſts. See **Burning.**

Fire. See **Burning.**

Fireworks.

Fireworks a nuiſance.

IT ſhall not be lawful for any perſon (of what age, ſex, degree, or quality ſoever) to make or cauſe to be made, or to ſell or expoſe to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; or to permit the ſame to be caſt or fired from his houſe or other place thereto belonging, into any public ſtreet or road; or to throw or fire, or be aiding in throwing or firing the ſame, in any publick ſtreet, houſe, ſhop, river, or highway.; and every ſuch offence ſhall be adjudged a common nuiſance. 9 & 10 *W.* *c.* 7. *ſ.* 1.

Making or ſelling rockets.

And if any perſon ſhall make or cauſe to be made, or give, ſell, or offer to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; he ſhall on conviction before one juſtice, or chief magiſtrate, by confeſſion, or oath of two witneſſes, forfeit 5l. half to the poor, and half to the proſecutor; to be levied by diſtreſs, by warrant of ſuch juſtice or chief magiſtrate. *ſ.* 2.

Suffering rockets to be fired.

And if any perſon ſhall permit any the ſame to be caſt or fired, from his houſe or other place thereto belonging, into any public ſtreet or road, or any other houſe or place; he ſhall forfeit 20s. in like manner. *Id.*

Firing rockets.

And if any perſon ſhall caſt or fire, or be aiding in caſting or firing any the ſame, into any publick ſtreet, houſe, ſhop, river, or highway; he ſhall forfeit 20s. in like manner; and if he ſhall not immediately on conviction pay to the juſtice the ſaid forfeiture for the uſes aforeſaid, he ſhall commit him to the houſe of correction, to be kept to hard labour for any time not exceeding one month, unleſs he ſhall ſooner pay the forfeiture. *ſ.* 3.

E. 13 *G.* 3. *Scott* an infant by his next friend, againſt *Shepherd* an infant by guardian. An action was brought, of treſpaſs and aſſault, againſt the defendant for throwing, caſting, and toſſing a lighted ſquib, at and againſt the plaintiff, and ſtriking him therewith on the face, and ſo burning one of his eyes that he loſt the ſight of it. On Not Guilty pleaded, the cauſe came on to be tried before Mr. J. *Nares* at the aſſizes at *Bridgewater*; when the jury found a verdict for the plaintiff, with 100l. damages, ſubject to the opinion of the court on the following caſe. On the evening of the fair day at *Milborne Port*, the defendant threw a lighted ſquib from the ſtreet into the market houſe, which is a covered building, ſupported by

arches,

arches, and incloſed at one end, but open at the other and at both ſides, where a large concourſe of people was aſſembled; which lighted ſquib, ſo thrown by the defendant, fell upon the ſtanding of one *Yates*, who ſold gingerbread and other like goods: That one *Willis* inſtantly, and to prevent injury to himſelf and the ſaid wares of the ſaid *Yates*, took up the ſaid lighted ſquib from off the ſaid ſtanding, and then threw it acroſs the ſaid market houſe; when it fell upon another ſtanding there of one *Ryall*, who ſold the ſame ſort of wares, who inſtantly, and to ſave his own goods from being injured, took up the ſaid lighted ſquib from off the ſaid ſtanding, and then threw it to another part of the ſaid market houſe, and, in ſo throwing it, ſtruck the plaintiff then in the ſaid market houſe in the face therewith, and the combuſtible matter then burſting put out one of the plaintiff's eyes. The queſtion was, Whether this action is maintainable? The caſe was argued two ſeveral terms; and the court being divided in their judgments, delivered their opinions *ſeriatim*.—*Nares* J. was of opinion that treſpaſs would well lie in this caſe: That the natural and probable conſequence of the act done by the defendant was injury to ſomebody, and therefore the act was illegal at common law; and the throwing of ſquibs has by the ſtatute been ſince made a nuiſance; being therefore unlawful, the defendant was liable to anſwer for the conſequences, be the injury mediate or immediate: That the defendant was the perſon who gave the miſchievous faculty to the ſquib, and that miſchievous faculty remained in it till the exploſion: That no new power of doing miſchief was communicated to it by *Willis* or *Ryall*. It is like the caſe of a mad ox turned looſe in a crowd: The perſon who turns him looſe is anſwerable in treſpaſs for whatever miſchief he may do. The intermediate acts of *Willis* and *Ryall* will not purge the original wrong in the defendant; but he who does the firſt wrong is anſwerable for all the conſequential damages.—*Blackſtone* J. was of opinion that an action of treſpaſs did not lie for *Scott* againſt *Shepherd*. He took the ſettled diſtinction to be, that where the injury is immediate, an action of treſpaſs will lie; but where it is only conſequential, it muſt be an action on the caſe. Here the original act was as againſt *Yates* as a treſpaſs; not as againſt *Ryall* or *Scott*. The wrongful act was complete, when the ſquib lay at reſt upon *Yates*'s ſtall. He or any by-ſtander had, I allow, a right to protect themſelves by removing the ſquib, but ſhould have taken care to do it in ſuch a manner as not to endamage others. But *Shepherd*, I think, is not anſwer-

able in an action of treſpaſs and aſſault for the miſchief done by the ſquib in the new motion impreſſed upon it, and the new direction given to it, by either *Willis* or *Ryall*, who both were free agents, and acted upon their own judgment. As I therefore think that no immediate injury paſſed from the defendant to the plaintiff and without ſuch immediate injury, no action of treſpaſs can be maintained; I am of opinion, that in this action judgment ought to be for the defendant.—*Gould* J. was of opinion that this action was well maintainable. I think the defendant may be conſidered in the ſame view as if he himſelf had perſonally thrown the ſquib in the plaintiff's face. The terror impreſſed upon *Willis* and *Ryall* excited ſelf-defence, and deprived them of the power of recollection. What they did was therefore the inevitable conſequence of the defendant's unlawful act. Had the ſquib been thrown into a coach full of company, the perſon throwing it out again would not have been anſwerable for the conſequences. What *Willis* and *Ryall* did was by neceſſity, and the defendant impoſed that neceſſity upon them.—*De Grey* C. J. The true queſtion is, Whether the injury received by the plaintiff ariſes from the force of the original act of the defendant, or from a new force by a third perſon. And I am of opinion that the injury is the direct and immediate act of the defendant. The throwing of the ſquib was an act unlawful, and tending to affright the by-ſtanders. So far, miſchief was originally intended; not any particular miſchief, but miſchief indiſcriminate and wanton. Whatever miſchief therefore follows, he is author of it. I look upon all that was done ſubſequent to the original throwing as a continuation of the firſt force and firſt act, which will continue till the ſquib was ſpent by burſting. And I think, that any innocent perſon, removing the danger from himſelf to another, is juſtifiable; the blame lights upon the firſt thrower The new direction, and new force, flow out of the firſt force, and are not a new treſpaſs.———And the plaintiff had judgment. *Black. Rep.* 892.

Fiſh and Fiſheries.

THERE are ſome acts relating to this ſubject, of which, being of leſs general concern, it is thought ſufficient to inſert only the titles; *viz.*

(1) An act for the preſervation of fiſhing in the river of *Severn.* 30 C. 2. *c.* 9. (2) An

(2) An act for the increaſe and better preſervation of ſalmon and other fiſh, in the rivers within the counties of *Southampton* and *Wilts*. 4 *An. c.* 21. In which ſome alterations are made by the 1 *G. ſt.* 2. *c.* 18.

(3) An act for the better preſervation and improvement of the fiſhery within the river of *Thames*, and for regulating and governing the company of fiſhermen of the ſaid river. 9 *An. c.* 26.

(4) An act for the more effectual preſervation and improvement of the ſpawn and fry of fiſh in the river of *Thames* and waters of *Medway*; and for the better regulating the fiſhery thereof. 30 *G.* 2. *c.* 21.

(5) An act for the better preſervation of fiſh, and regulating the fiſheries, in the rivers *Severn* and *Verniew*. 18 *G.* 3. *c.* 33.

What follows ſeems beſt reducible under theſe heads:

I. The penalty of fiſhing in ponds and other private fiſheries.
II. Rules concerning the ſize, and preſerving the breed of fiſh.
III. Of the herring and other fiſheries.
IV. Of the oyſter fiſheries.
V. Rules concerning fiſhing in or near the ſea.
VI. Importing fiſh.

I. The penalty of fiſhing in ponds and other private fiſheries.

Erecting a fiſh pond.

Any man may erect a fiſh pond without licence; becauſe it is a matter of profit, and for the increaſe of victuals. 2 *Inſt.* 199.

Treſpaſſing in ponds.

If any treſpaſſers in ponds be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs; and they ſhall have three years' impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof) and then ſhall find good ſurety that after they ſhall not commit the like treſpaſs: And if they have not whereof to make fine, after three years' impriſonment they ſhall find like ſurety; and if they cannot find like ſurety they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit. 3 *Ed.* 1. *c.* 20.

Note; Thoſe are treſpaſſers in ponds, who endeavour to take fiſh therein. 2 *Inſt.* 200.

If

Breaking the dam, or fiſhing in ponds.

If any perſon ſhall unlawfully break, cut, or deſtroy any head or dam of a fiſh pond, or ſhall wrongfully fiſh therein, with intent to take or kill fiſh; he ſhall on conviction at the ſuit of the king, or of the party, at the aſſizes or ſeſſions, be impriſoned three months, and pay treble damages; and after the three months expired, ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El. c.* 21. *ſ.* 2. 6.

Perſons ſtealing fiſh out of ponds, or waters, to make recompence to the owner thereof;

Whereas divers idle, diſorderly, and mean perſons, betake themſelves to the ſtealing, taking, and killing of fiſh, out of ponds, pools, moats, ſtews, and other ſeveral waters and rivers, to the great damage of the owners thereof; it is enacted that if any perſon ſhall uſe any net, angle, hair, nooſe, troll, or ſpear; or ſhall lay any wears, pots, fiſh hooks, or other engines; or ſhall take any fiſh by any means or device whatſoever, or be aiding thereunto, in any river, ſtew, pond, moat, or other water, *without the conſent of the lord or owner of the water*; and be thereof convicted by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; every ſuch offender in ſtealing, taking or killing fiſh, ſhall for every ſuch offence give to the party injured ſuch recompenſe, and in ſuch time as the juſtice ſhall appoint, not exceeding treble damages; and moreover ſhall pay down to the overſeers for the uſe of the poor, ſuch ſum, not exceeding 10s. as the juſtice ſhall think meet: In default of payment, to be levied by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not exceeding one month, unleſs he enter into bond with one ſurety to the party injured, not exceeding 10l. never to offend in like manner 22 & 23 *C.* 2. 25. *ſ.* 7.

and alſo pay 10s.

Without the conſent of the lord or owner of the water] *M.* 32 *G.* 2. *K.* and *Mallinſon.* A conviction for *taking and killing fiſh*, not ſetting forth (amongſt other particulars) that the defender had not the licence or *conſent of the owner*, was adjudged to be bad. For, by the court; The offence provided againſt by the act is *ſtealing* fiſh, taking it without the conſent of the owner. The juriſdiction given to the juſtice is over every ſuch offender in ſtealing, taking, and killing. But the man here is not convicted of any offence; for he is not charged with ſtealing, nor even with taking and killing the fiſh of another perſon, or in another perſon's pond. It may be his own pond, and his own fiſh, for any thing that is ſtated to the contrary. And the conviction was quaſhed. *Bur. Mansf.* 679.

Perſons

Perſons aggrieved may appeal to the next ſeſſions, whoſe determination therein ſhall be final; if no title to any land, royalty, or fiſhery be therein concerned. 22 & 23 *C.* 2. *c.* 25. *ſ.* 9. Appeal.

And the juſtices may take, cut, and deſtroy, all ſuch angles, ſpear, hairs, nooſes, trolls, wears, pots, fiſh hooks, nets, or other engines, wherewith ſuch offender ſhall be apprehended. *ſ.* 8 Engines may be ſeized and deſtroyed.

Whereas divers idle, diſorderly, and mean perſons, have and keep nets, angles, leaps, piches, and other engines for the taking and killing of fiſh out of the ponds, waters, rivers, and other fiſheries, to the damage of the owners thereof; therefore no perſon hereafter ſhall have or keep any net, angle, leap, piche, or other engine for the taking of fiſh, other than the makers and ſellers thereof, and other than the owner and occupier of a river or fiſhery; and except fiſhermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fiſhery, and every other perſon by him appointed, may ſeize, detain, and keep to his own uſe, every net, angle, leap, piche, and other engine, which he ſhall find uſed or laid, or in the poſſeſſion of any perſon fiſhing in any river or fiſhery, without the conſent of the owner or occupier thereof. And alſo any perſon, authoriſed by a juſtice's warrant, may in the day time ſearch the houſes, out-houſes, and other places of any perſon hereby prohibited to have or keep the ſame, who ſhall be ſuſpected to have or keep in his cuſtody or poſſeſſion any net, angle, leap, piche, or other engine aforeſaid, and ſeize and keep the ſame to his own uſe, or cut or deſtroy the ſame, as things by this act prohibited to be kept by perſons of their degree. 4 & 5 *W.* *c.* 23. *ſ.* 5, 6.

If any perſon ſhall enter into any park or paddock fenced in and incloſed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling-houſe, in or through which park or paddock, garden, orchard, or yard, any river or ſtream of water ſhall run or be, or wherein ſhall be any river, ſtream, pond, pool, moat, ſtew, or other water, and by any ways, means, or device whatſoever, ſhall ſteal, take, kill, or deſtroy, any fiſh bred, kept, or preſerved therein, without the conſent of the owner thereof; or ſhall be aiding or aſſiſting therein; or ſhall receive or buy any ſuch fiſh, knowing the ſame to be ſo ſtolen or taken as aforeſaid; and ſhall be convicted thereof at the aſſizes, within ſix kalendar months after the offence committed; he ſhall be tranſported for ſeven years. And any offender, ſurren- Entering any park incloſed, or garden, &c. to deſtroy fiſh; tranſportation.

ſurrendering himſelf to a juſtice, or being apprehended, or in cuſtody for ſuch offence or on any other account, who ſhall make confeſſion thereof, and a true diſcovery on oath of his accomplice or accomplices, ſo as ſuch accomplice may be apprehended, and ſhall on trial give evidence ſo as to convict ſuch accomplice, ſhall be diſcharged of the offence ſo by him confeſſed. 5 *G.* 3. *c.* 14. *ſ.* 1, 2.

Taking fiſh in other incloſed grounds, being private property.

And if any perſon ſhall take, kill, or deſtroy, or attempt to take, kill, or deſtroy, any fiſh in any river or ſtream, pond, pool, or other water, (not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling-houſe, but in any other incloſed ground being private property); he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit 5 l. to the owner or owners of the fiſhery of ſuch river or ſtream of water, or of ſuch pond, pool, moat, or other water: And ſuch juſtice, on complaint upon oath, may iſſue his warrant to bring the perſon complained of before him; and if he ſhall be convicted before ſuch juſtice, or any other juſtice of the county or place, he ſhall immediately after conviction pay the ſaid penalty of 5 l. to ſuch juſtice, for the uſe of ſuch perſon as the ſame is hereby appointed to be paid unto; and in default thereof, ſhall be committed by ſuch juſtice to the houſe of correction for any time not exceeding ſix months, unleſs the forfeiture ſhall be ſooner paid: Or ſuch owner of the fiſhery may bring an action for the penalty (within ſix kalendar months after the offence) in any of the courts of record at *Weſtminſter*. *ſ.* 3, 4.

Exception.

Provided, that nothing in this act ſhall extend to ſubject any perſons to the penalties thereof, who ſhall fiſh, take, or kill, and carry away, any fiſh in any river or ſtream of water, pond, pool, or other water, wherein ſuch perſon ſhall have a juſt right or claim to take, kill, or carry away ſuch fiſh. *ſ.* 5.

On conviction it muſt appear that ſuch fiſhing in private property was without conſent of the owner.

In the caſe of *K.* and *Corden*, *H.* 9 *G.* 3. The conviction was, that on ſuch a day, at ſuch a place, *Martha Buxton* of the pariſh of *Aſhborne* in the county of *Derby*, ſpinſter, cometh in her proper perſon before me *R. B.* (the juſtice) and upon her corporal oath giveth me the ſaid juſtice to underſtand and be informed, that *Uriah Corden* of *Clifton* in the pariſh of *Aſhborne* in the ſaid county gentleman, on the 18th of *June* laſt paſt, in the pariſh of *Aſhborne* aforeſaid, did fiſh with a net, in a brook or ſtream called the *Shoo Brook*, in that part of the ſaid brook which runneth between the manor of *Clifton* and the

the manor of *Uffcoat* and *Underwood* in the ſaid county; and did then and there take, kill, and deſtroy ſeveral fiſh, againſt the form of the ſtatute in ſuch caſe made and provided; he the ſaid *Uriah Corden* not having any juſt right or claim to take, kill, or carry away any ſuch fiſh; and the ſaid part of the ſaid brook or ſtream, wherein and whereupon the ſaid fiſh were ſo taken, killed and carried away, not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling-houſe, but in other incloſed ground then and there being private property. And further, on the ſame day and year aforeſaid, and at the place aforeſaid, cometh one *John Chatterton* of *Aſhborne* aforeſaid, gentleman, and giveth me the ſaid juſtice to underſtand, that *Richard Hayne* of *Aſhborne* aforeſaid eſquire, is the true and lawful owner of the fiſhery of the aforeſaid part of the ſaid brook called *Schoo Brook*, which runneth between the manor of *Clifton* and the manor of *Uffcoat* and *Underwood* in the county aforeſaid. And thereupon the ſaid *Martha Buxton*, the informant aforeſaid, prays that the ſaid *Uriah Corden* may be convicted of the offence aforeſaid, according to the form of the ſtatute in ſuch caſe made and provided. Whereupon, afterwards, to wit, upon the 16th day of July in the year aforeſaid in the county aforeſaid, he the ſaid *Uriah Corden*, being by virtue of my warrant brought before me the juſtice aforeſaid, at *Aſhborne* aforeſaid, to anſwer the ſaid charge contained in the ſaid information, and having heard the ſame, he the ſaid *Uriah Corden* is aſked by me the ſaid juſtice, "if he can "ſay any thing for himſelf, why he ſhould not be con-"victed of the premiſes above charged upon him in "form aforeſaid." And becauſe he the ſaid *Uriah Corden* doth not nor can ſay any thing in his own defence touching and concerning the premiſes aforeſaid, but doth of his own accord freely and voluntarily acknowledge and confeſs all and ſingular the ſaid premiſes to be true, in manner and form as the ſame are charged upon him in the ſaid information; and becauſe, all and ſingular the premiſes being heard and fully underſtood by me the ſaid juſtice, it manifeſtly appears to me that he the ſaid *Uriah Corden* is guilty of the above-mentioned offence ſo laid to his charge; it is therefore adjudged by me the ſaid juſtice, that the ſaid *Uriah Corden* is guilty of the foreſaid offence; and that he be, and is hereby convicted by me the juſtice aforeſaid of the premiſes aforeſaid, according to the form of the ſtatute aforeſaid; and I the juſtice

aforeſaid do award and adjudge, that for the premiſes aforeſaid he hath forfeited the ſum of 5l. of lawful money of *Great Britain*, to be paid as the ſtatute aforeſaid doth direct.—Two exceptions were taken to this conviction. Firſt, It doth not appear that this conviction was made upon the complaint of the owner, or by authority from the owner; or even that this was a fiſhing without the conſent of the owner. Whereas it appears clearly, upon conſidering the whole act of parliament, and comparing one part of it with another, that the complaint of the owner is eſſentially neceſſary to give juriſdiction to the juſtice. Secondly, Here is no proof upon oath that Mr. *Hayne* was the owner, or who elſe was ſo. *John Chatterton*'s information is not upon oath: And it is confined to the time of giving it; but ſays nothing about who was owner at the time of the fiſhing. —Unto theſe exceptions it was anſwered; Firſt, There are no expreſſions in the act which require the complaint to the juſtice to be made by the owner. The words are general. The juriſdiction is given to the juſtice, upon complaint made to him upon oath. Secondly, The defendant has confeſſed the whole charge: And part of it is, that Mr. *Hayne* was the owner.—The court were of opinion that this conviction is bad. They thought that a ſtrict hand ought to be holden over theſe ſummary convictions, and it ought to appear to the court that the juſtice hath juriſdiction; which in this caſe doth not appear. Here is no complaint from the owner; nor doth it even appear to have been without his conſent. It ought at leaſt to appear that it was without his conſent. This is plainly implied in the act of parliament: The giving the penalty to the owner ſhews it. Here it doth not ſufficiently appear that this was private property; or who was the owner. The witneſs who gave the juſtice to underſtand "that Mr. *Hayne* is the owner," was not upon oath; and was therefore no witneſs. The ownerſhip is not ſufficiently charged: Neither is it confeſſed. The confeſſion goes no farther than the matter charged. The words in the conviction, "not having any juſt right or "claim to take, kill, or carry away any ſuch fiſh," are the words and opinions of *Martha Buxton*; not of the juſtice who made the conviction: And they are too general. The proviſo from whence they are taken means to except ſuch perſons as have a ſpecial right to fiſh in the fiſhery of another. The offence intended in this conviction is, fiſhing in the fiſhery of Mr. *Hayne*, being

ing private property. But all this might be done, for any thing that appears upon this conviction, with the consent of the owner. The fact ought to appear so that the court may be able to judge whether the conviction be agreeable to law. If the owner had been the complainer, that would have shewn his dissent: But this conviction is upon the complaint of *Martha Buxton*; and it doth not appear that the defendant hath been guilty of fishing in any water being private property, without consent of the owner.——And the conviction was quashed. *Burr. Mansf.* 2279.

By the black act before mentioned, if any person being armed and disguised, shall unlawfully steal or take away any fish out of any river or pond; or (whether armed and disguised or not) shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed, or shall rescue any person in custody for such offence, or procure any other to join with him therein; he shall be guilty of felony without benefit of clergy. Felony by the Black Act.

II. Rules concerning the assize, and preserving the breed of fish.

1. If any person shall lay or draw any net, engine, or other device, or cause any thing to be done in the *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Mersey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Daruent*, or *Trent*, whereby the spawn or fry of salmon, or any kepper or shedder salmon, or any salmon not 18 inches from the eye to the extent of the middle of the tail, shall be taken and killed; or shall set any bank, dam, hedge, stank, or net cross the same, whereby the salmon may be taken, or hindred from passing up to spawn; or shall, between *July* 31, and *Nov.* 12, (except in the *Ribble*, where they may be taken between *Jan.* 1, and *Sep.* 15,) take any salmon of any kind in any of the said rivers; or shall after *Nov.* 12 yearly, fish there for salmon with any net less than $2\frac{1}{2}$ inches in the mesh; he shall on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit 5 l. and the fish, nets, and engines; half the said sum to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction or gaol, not more than three months, nor less than one, to be kept to hard labour, and suffer such other corporal punishment as the Salmon.

juſtice ſhall think fit: The nets and engines to be cut or deſtroyed, in preſence of the juſtice: The banks, dams, hedges, and ſtanks, to be demoliſhed at the charge of the offender, to be levied in like manner. 1 *G. ſt.* 2. *c.* 18. *ſ.* 14.

Note; It is not ſaid who ſhall have the fiſh; ſo that it ſeemeth that they are forfeited to the king.

And no ſalmon out of the ſaid rivers ſhall be ſent to *London*, under ſix pounds weight; on pain that the ſender, buyer, or ſeller, on the like conviction, ſhall forfeit 5l. and the fiſh; half to the informer, and half to the poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. *Id. ſ.* 15.

And perſons aggrieved may appeal to the next ſeſſions. *Id. ſ.* 17.

Salmon ſpawn and ſmelts.

2. No ſalmon ſhall be taken in the *Humber*, *Ouze*, *Trent*, *Done*, *Aire*, *Darwent*, *Wharfe*, *Nid*, *Yore*, *Swale*, *Teſe*, *Tine*, *Eden*, or any other water wherein ſalmon are taken, beteen *Sep.* 8, and *Nov.* 11. Nor ſhall any young ſalmon be taken at mill-pools (nor in other places, 13 *R.* 2. *ſt.* 1. *c.* 19.) from *Midapril* or *Midſummer*; on pain of having the nets and engines burnt for the firſt offence; for the ſecond, impriſonment for a quarter of a year; for the third, a whole year; and as the treſpaſs increaſeth, ſo ſhall the puniſhment. And overſeers ſhall be aſſigned to inquire hereof. 13 *Ed.* 1. *ſt.* 1. *c.* 47. That is, under the great ſeal, and by authority of parliament. 2 *Inſt.* 477.

And no perſon ſhall put in the waters of *Thamiſe*, *Humber*, *Ouze*, *Trent*, nor any other waters, in any time of the year, any nets called ſtalkers, nor other nets or engines whatſoever, by which the fry or breed of ſalmons, lampreys, or any other fiſh, may in any wiſe be taken or deſtroyed; on the like pain. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the waters of *Lon*, *Wyre*, *Merſee*, *Rybbyl*, and all other waters in *Lancaſhire*, ſhall be put in defence as to taking of ſalmon, from *Michaelmas* to *Candlemas*, and in no other time of the year. And conſervators ſhall be appointed in like manner. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the juſtices of the peace (and the mayor of *London* on the *Thames* and *Medway*) ſhall ſurvey the offences in both the acts above mentioned; and ſhall ſurvey and ſearch all the wears in ſuch rivers, that they ſhall not be very ſtrait

ſtrait for the deſtruction of ſuch fry and brood, but of reaſonable wideneſs after the old aſſize uſed or accuſtomed; and they ſhall appoint under-conſervators, who ſhall be ſworn to make like ſurvey, ſearch, and puniſhment. And they ſhall inquire in ſeſſions, as well by their office, as at the information of the under-conſervators, of all defaults aforeſaid, and ſhall cauſe them which ſhall be thereof indicted, to come before them; and if they be thereof convict, they ſhall have impriſonment, and make fine at the diſcretion of the juſtices: and if the ſame be at the information of an under-conſervator, he ſhall have half the fine, 17 *R.* 2. *c.* 9.

Spawn in general and fiſh under ſize and out of ſeaſon.

3. By the 1 *El. c.* 17. No perſon, of what eſtate, degree, and condition ſoever he be, ſhall take and kill any young brood, ſpawn, or fry of fiſh; nor ſhall take and kill any ſalmon or trouts, not being in ſeaſon, being kepper or ſhedder; nor any pike or pikerel not being in length 10 inches fiſh or more; nor any ſalmon not being in length 16 inches fiſh; nor any trout not being in length eight inches fiſh; nor any barbel not being in length 12 inches: and no perſon ſhall fiſh or take fiſh by any device, but only with net or tramel, whereof the meſh ſhall be two inches and a half broad (angling excepted, and except ſmelts, loches, minnies, bulheads, gudgeons, and eels); on pain of forfeiting 20 s. for every offence, and alſo the fiſh, nets, and engines.

(Note, in ſome editions of the ſtatutes it is 20 l. in others 20 s.; in the record it is not diſtinguiſhable whether it is pounds or ſhillings. The latter ſeems more adequate to the offence.)

And the conſervators of rivers may inquire hereof by a jury; and in ſuch caſe they ſhall have the fines.

The leet alſo may inquire hereof; and then the forfeiture ſhall go to the lord of the leet. And if the ſteward do not charge the jury therewith, he ſhall forfeit 40 s.; half to the king, and half to him that ſhall ſue. And if the jury conceal the offence, he may impanel another jury to inquire of ſuch concealment; and if it is found, the former jury ſhall forfeit every one 20 s. to the lord of the leet.

And if the offence is not preſented in the leet within a year, then it may be heard and determined at the ſeſſions or aſſizes. (Saving the right of the conſervators.)

And by the 33 *G.* 2. *c.* 27. No perſon ſhall take, or knowingly have in his poſſeſſion either in the water or on ſhore, or ſell or expoſe to ſale, any ſpawn, fry, or brood of fiſh, or any unſizeable fiſh, or fiſh out of ſeaſon,

or any smelt not five inches long; and any person may seize the same, together with the baskets and package, and charge a constable or other peace officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall besides forfeit 20 s. to be levied by distress by warrant of such justice, and distributed half to the prosecutor and half to the poor of the parish where the offence was committed (and any inhabitant of such parish, nevertheless, may be a witness); for want of sufficient distress, to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid.——Provided, that the justice may mitigate the said penalty, so as not to remit above one half. Persons aggrieved may appeal to the next sessions.——And the form of the conviction may be thus:

Be it remembered, that on this —— day of —— in the —— year of the reign of —— A. O. *is convicted before me —— one of his majesty's justices of the peace for the —— of —— and I do adjuge him to pay and forfeit the sum of ——. Given under my hand and seal the day and year aforesaid.* s. 13. 15, 16, 17, 18, 19.

Nets standing day and night.

No person shall fasten any nets over rivers, to stand continually day and night; on pain of 100s. to the king 2 *H.* 6. *c.* 15.

III. Of the herring and other fisheries.

Herring fishery.

If any person shall damnify or destroy, without consent of the society of the Free *British* fishery, any of the nets, sails, cordage, stores, or other materials belonging to the said society; he shall, on conviction on the oath of two witnesses before one justice, forfeit to the society treble value, by distress; and for want of sufficient distress, be committed to the house of correction to hard labour for any time not exceeding three months, or till satisfaction be made. Prosecution to be in six kalendar months. 28 *G.* 2. *c.* 14. *s.* 9.

By 26 *G.* 3. *c.* 81. After 1st *June* 1787, an annual bounty is granted for 7 years (*a*) to owners of ships of

(*a*) By 35 *G.* 3. *c.* 56. *s.* 1. those acts are further continued. And by 39 *G.* 3. *c.* 100. they are further continued till the end of the next session of parliament.

certain dimenſions and conſtructions [which by 27 *G.* 3. *c.* 10. is extended to all veſſels however built] of 15 tons and upwards employed in the *White Herring* fiſhery, under certain regulations particularly ſet forth in thoſe acts; and ſo far as the ſame fall under the juriſdiction of juſtices of the peace, it is thought neceſſary to inſert them as follows:

Caſks to be marked.

After 1ſt *October* 1786, on all barrels and caſks in which any fiſh (except freſh fiſh) ſhall be packed, either for exportation or home conſumption, the name of the curer of ſuch fiſh ſhall be marked and burnt with iron, in fair, large, legible, conſpicuous, and permanent characters; and the ſtaves of every barrel in which any white herrings, or wet white fiſh, ſhall be packed or put up for exportation, ſhall not be of a leſs thickneſs at the bulge than half an inch, and ſhall be full bound; and in default thereof the ſame may be ſeized and ſecured, by any officer of exciſe or cuſtoms; and on proof of the fact, on oath, before one juſtice, the ſame, together with the caſks, ſhall be forfeited. 26 *G.* 3. *c.* 81. *ſ.* 17, 18.

Thickneſs of the ſtaves.

Fiſhermen may ſet up trades.

And every perſon who for 7 ſucceſſive years hath followed the occupation of a ſeaman or fiſherman on board any ſhip or veſſel employed in the fiſheries of *Great Britain*, (being a married man,) may ſet up and exerciſe ſuch trade as he is apt and able for, in any town or place in *Great Britain*, without moleſtation by reaſon of uſing ſuch trade, as freely, and with the ſame proviſions and regulations, as any mariner or ſoldier by 22 *G.* 2. *c.* 44. are authorized to do. 26 *G.* 3. *c.* 81. *ſ.* 19.

Certain penalties impoſed by 1 G. c. 18. & 9 G. 2. c. 33. may be recovered by two juſtices.

And whereas by 1 *G. c.* 18. & 9 *G.* 2. *c.* 33. No ſort of flat fiſh, nor freſh fiſh whatſoever (except turbots and lobſters) could be legally imported, or ſold in *England*, which were taken by, bought of, or received from, any foreigner, or out of any ſtrange bottom (except proteſtant ſtrangers) inhabiting this kingdom, on forfeiture of 100l. by the perſon offending; and the maſter of the veſſel in which any ſuch fiſh ſhould be illegally imported was alſo liable to forfeit 50l. to be recovered in the courts at *Weſtminſter*. And whereas the great expence and delay attending ſuch proſecutions diſcourage perſons from ſuing for ſuch penalties; It is therefore enacted, that upon complaint made on oath, before two juſtices, by any officer, that he hath cauſe to believe, that any fiſh hath been imported or expoſed to ſale, contrary to the aforeſaid acts, ſuch juſtices may ſummon the perſon accuſed, either perſonally, or by leaving a ſummons at his uſual place of

abode whilst he shall be on shore, or not being on shore, with some person in the vessel to which he belongs; or by warrant may cause such person to be brought before them, at such time and place as they shall think fit. 26 *G.* 3. *c.* 81. *s.* 43.

All penalties imposed by 9 G. 2. c. 33. may be recovered by two justices.

And all pecuniary penalties by the said act of 9 *G.* 2. *c.* 33. imposed, may be recovered before two justices, on due proof and conviction of the offence, by confession, or oath of one witness; and the whole of such penalty shall go to the informer; and if such penalty shall not upon conviction, with the costs thereof, be immediately paid, the same shall be levied by distress; and for want of sufficient distress, the defender shall be sent to the common gaol for one year, unless the penalty shall be sooner paid. 26 *G.* 3. *c.* 81. *s.* 46.

Offenders may be detained for 48 hours.

And to the end that the person convicted in any of the penalties last aforesaid, may not by flight after conviction evade imprisonment, such justices, immediately after conviction, may order such offender into custody (in case the penalty be not immediately paid) during such time, not exceeding 48 hours, as they shall think proper to allow for return of the warrant of distress. *s.* 47.

Where the goods are not sufficient to answer the distress.

Provided, that if it shall appear to the satisfaction of such justices, either by confession, or other witness, that such party hath not goods sufficient to answer the penalty, such justices may, without issuing any warrant of distress, commit the party so convicted, as if such warrant had actually issued, and a return of *nulla bona* been made thereon. *s.* 48.

Security may be given for payment of the penalty.

Provided also, that if any such offender ordered to be committed, shall before his commitment procure security to be given by two sufficient sureties, for payment of the penalty and charges, within 14 days, exclusive of the day of conviction, the justices may accept such security; and on non-payment within the time limited, any two justices may commit the party convicted, and also his sureties, to the common gaol, for the same time as the person convicted would have been liable to if no security had been given, unless the penalty and charges are sooner paid. *s.* 49.

Appeal.

Any person thinking himself aggrieved may, within 3 months, appeal to the sessions, giving six days' notice to the informer, and with two sureties entering into recognizance before one justice, to appear and prosecute such appeal, and abide the order of, and pay the costs awarded at such sessions, (if any,) and if such judgment be affirmed, the

party

party appealing shall pay double costs to be ascertained by the court. *s.* 50.

And in case the person appealing shall have paid the penalty into the hands of the justices by way of deposit, or shall be then imprisoned, such person may appeal, on his entering (without sureties) into recognizance as aforesaid, and remaining in prison in the mean time; or depositing such penalty with the justices until the appeal shall be determined. *s.* 51.

Convictions not to be set aside for want of form.

And no conviction or judgment shall be set aside by the sessions for want of form, or through the mis-stating of any fact, circumstance, or other matter, provided the material facts on which such conviction is grounded, be proved to the satisfaction of the court: And no proceeding of the said court shall be removed by *certiorari* into any other court. *s.* 52.

Witnesses.

Witnesses not appearing having been duly summoned, may be apprehended by warrant of such justices, and brought before them; and if any witness shall refuse to be sworn, and give his evidence, or willfully foreswear himself or prevaricate in his evidence, such justices may commit him to the common gaol for one year, without bail. *s.* 44.

Written evidence.

And the examination of every witness shall be taken down in writing; and in case the party accused cannot be made to appear at the time of such examination, or any witness cannot be made to attend when such offender shall appear: in that case such examination in writing may be read and made use of, and shall have the same effect as if such witness had been examined *vivâ voce*. *s.* 45.

IV. Of the Oyster fisheries.

Unlawfully fishing in any oyster fishery.

By the 31 *G.* 3. *c.* 51. If any person shall with any net, traul, dredge, or other instrument or engine whatsoever, take or catch any oyster or oyster brood, within the limits of any oyster fishery of this kingdom, or make use thereof for the purpose of catching oysters or oyster brood although none be actually taken; or shall drag upon the ground of any such fishery with any net or other engine; every such person (other than the owner, lessee, or occupier of such fishery, or person lawfully entitled to catch oysters therein) shall be deemed guilty of a misdemeanor, and may be indicted at the assizes or quarter sessions for the county or division; and the justices in sessions may hear and determine all such offences: And every such of-

fender being convicted by verdict, or on his own confession, may be punished by fine and imprisonment, or either of them, as the court shall think proper; such fine not to exceed 20 l. or be less than 40 s.; and such imprisonment not to be for more than 3 months, nor less than one month. *s.* 1.

Offenders may be apprehended.

And any justice, upon complaint on oath within 30 days of such offence having been committed, may by warrant cause such offender to be brought before himself or any other justice, who may commit him to the common gaol or other prison, until the next assizes or quarter sessions which ever shall first happen, unless he enter in recognizance with two sureties in 20 l. each, to appear and answer to any indictment which may be preferred against him by virtue of this act. *s.* 3.

Offenders refusing to tell their names.

And if any such person (except as aforesaid) shall be found taking or using engines for taking oysters or oyster brood, within the limits of any oyster fishery, who shall refuse to discover his name and place of abode to the owner, lessee, or occupier of such fishery, or his apprentice or servant, he may seize and detain such offender and carry him before a justice, who, on oath being made of the offence, shall proceed against him in the same manner as if he had been apprehended and brought before him by virtue of a warrant. *s.* 4.

Recognizance to prosecute.

Provided, that no justice shall commit any such person, or require security from him for his appearance as aforesaid, unless one sufficient householder being an owner, lessee, or occupier, or otherwise lawfully entitled to catch oysters in such fishery, shall enter into recognizance in 20 l. for his appearance at such assizes or quarter sessions, and there to prefer a bill of indictment against such offender. *s.* 5.

Offenders may be bailed.

And if after any such person shall have been committed, two sufficient sureties shall before any justice, enter into recognizance in 20 l. each for the appearance of such person so committed at such next assizes or quarter sessions, and to answer to any indictment which may be preferred against him; such justice may by warrant order such person to be discharged out of custody. *s.* 6.

Not to extend to floating fish.

Provided, that nothing herein shall extend to hinder any person from catching or fishing for any floating fish in the waters or creeks within the limits of any oyster fishery. *s.* 2.

Nor to affect any former act.

Provided always, that this act shall not affect any act now in force respecting any particular oyster fishery; or

precludo

preclude any proſecution at the common law, for any offence herein deſcribed: but no perſon ſhall be liable to have an action brought againſt him for any offence for which he ſhall have been puniſhed by this act. *ſ.* 7, 8.

V. Rules concerning fiſhing in or near the ſea.

Lobſters.

No perſon ſhall take, kill, or deſtroy any lobſters on the coaſt of *Scotland*, from *June* 1, to *Sep.* 1, on pain of 5l.; to be recovered by any perſon who ſhall inform and ſue for the ſame, on a ſummary complaint before two juſtices of the ſhire on the coaſt where the offence ſhall be committed. 9 *G.* 2. *c.* 33. *ſ.* 4.

Erecting a new wear.

Every perſon who ſhall ſet up any new wear along the ſea ſhore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek; ſhall, on conviction before one juſtice, or mayor, forfeit for every offence 10l. half to the king, and half to him that ſhall ſue; to be levied by the conſtables or churchwardens by diſtreſs. 3 *J.* *c.* 12. *ſ.* 2.

Spawn of ſea fiſh.

Every perſon who ſhall willingly take, deſtroy, or ſpoil any ſpawn, fry, or brood of any ſea fiſh, in any wear or other engine or device whatſoever; ſhall forfeit for every offence 10l. in like manner. *ſ.* 2.

Size of nets at ſea.

And every perſon who ſhall fiſh in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the ſea, with any draw-net, or drag-net under three inches meſh, *viz.* 1½ inch from knot to knot (except for the taking of ſmoulds in *Norfolk* only,) or with any nets with canvas, or other engine or device, whereby the ſpawn, fry, or brood of ſea fiſh may be deſtroyed; ſhall in like manner forfeit ſuch net, and alſo 10s. for every offence, half to the poor, and half to him that ſhall ſue. *Id.*

But this act ſhall not extend to any net of leſſer meſh, only for taking of herrings, pilchards, ſprats, or lavidnian. *Id. ſ.* 3.

And by a ſubſequent ſtatute, if any perſon ſhall uſe at ſea, on the *Engliſh* coaſt, any traul-net, drag-net, or ſet-net, for catching of any fiſh (except herrings, pilchards, ſprats or lavidnian) which hath the meſh leſs than 3½ inches from knot to knot; or which hath a falſe or double bottom; or ſhall put one net behind another; he ſhall, on conviction (after ſummons) before one juſtice where the offender reſides or ſhall be found, on oath of two witneſſes, in one month after the offence, forfeit the ſame,

and also 20l. half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to gaol for twelvemonths; and the nets to be burnt. 1 *G. st.* 2. *c.* 18. Persons aggrieved may appeal to the next sessions. *Id.*

Size of sea fish. By the same act of 1 *G. st.* 2. if any person shall bring to shore, or expose to sale any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbot 16 inches, brill or pearl 14, codlin 12, whiting 6, bass and mullet 12, sole 8, place or dab 8, flounder 7; he shall forfeit the fish to the poor; and also 20s. half to the informer, and half to the poor; to be levied in the like manner: for default of payment, or of sufficient distress, to be sent to the next house of correction, or other common gaol of the county, to be severely whipt and kept to hard labour six days, and not longer than 14. Persons aggrieved may appeal to the next sessions.

But by the 33 *G.* 2. *c.* 27. Bret or turbot, brill or pearl, although under the said dimensions, may be exposed to sale, so as the same be not sold by retail for above 6d. a-pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured if required; the same shall be forfeited, and the offender shall also forfeit 20s. to be recovered, mitigated, and applied, as the penalties in the said act mentioned under the last head, relating to the spawn of fish, and fish under size, and out of season: and the money paid shall be returned to the party who paid the same. *s.* 11.

VI. Importing fish.

May be seized. If any ling, herring, cod, or pilchard, salmon, eels, or congers, taken by foreigners, shall be imported or exposed to sale; any person may seize the same, half for himself, and half for the poor. 18 *C.* 2. *c.* 2.

Penalty 100l. And by the 1 *G. st.* 2. *c.* 18. and 9 *G.* 2. *c.* 33. no fish taken by or received of any foreigner, except protestants inhabiting in *England*, shall be imported (except eels, stock fish, anchovies, sturgeon, botarge, or cavear, lobster, and turbot); on pain of 100l. and the master of the vessel 50l. half to the poor, and half to the informer who shall sue in 12 months in any of the courts at *Westminster*.

For fishing, so far as the salt duties are concerned therein, may be consulted that part of the title Excise, which treateth of the duties upon salt.

The

The fiſh markets in *London* and *Weſtminſter* are regulated by the ſtatutes of 22 *G.* 2. *c.* 49. 29 *G.* 2. *c.* 39. 33 *G.* 2. *c.* 27. and 2 *G.* 3. *c.* 15. which are too large and not general enough to be here inſerted.

Flight. See Forfeiture.

Forcible entry and detainer.

FORCE, in the common law, is moſt commonly taken in ill part, for unlawful violence. 1 *Inſt.* 161.

It ſeems that at the common law, a man diſſeiſed of any lands or tenements, if he could not prevail by fair means, might lawfully regain the poſſeſſion thereof by force, unleſs he were put to a neceſſity of bringing his action, by having neglected to re-enter in due time: And it ſeems certain, that even at this day, he who is wrongfully diſpoſſeſſed of his *goods*, may juſtify the retaking of them by force from the wrong doer, if he refuſe to re-deliver them; for the violence which happens through the reſiſtance of the wrongful poſſeſſor, being originally owing to his own fault, gives him no juſt cauſe of complaint, inaſmuch as he might have prevented it by doing as he ought. 1 *Haw.* 140.

But this indulgence of the common law, in ſuffering perſons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and alſo by force to retain their wrongful poſſeſſions, it was thought neceſſary by many ſevere laws to reſtrain all perſons from the uſe of ſuch violent methods of doing themſelves juſtice. 1 *Haw.* 141.

However, even at this day, in an *action* of forcible entry grounded on thoſe laws, if the defendant make himſelf a title which is found for him, he ſhall be diſmiſſed without any inquiry concerning the force; for howſoever he may be puniſhable *at the king's ſuit*, for doing what is prohibited by ſtatute, as a contemner of the laws, and diſturber of the peace, yet he ſhall not be liable to pay any damages for it to the plaintiff, whoſe injuſtice gave him the provocation in that manner to right himſelf. *Id.*

Yet

Yet ſtill forcible entry and detainer are offences at the common law; and the proſecutor, if he pleaſes, may proceed in that way: but then the indictment ought to expreſs not only the common technical words *with force and arms*, but alſo ſuch circumſtances as thereby it may appear upon the face of the indictment to be more than a common treſpaſs. *Burr. Mansf.* 1698. 1731.

Perſons having been in poſſeſſion three years.

But the ſafeſt and moſt uſual way is to proceed upon the ſtatutes. Concerning which, (after having premiſed, that *they who keep poſſeſſion with force, in lands and tenements, whereof they or their anceſtors, or they whoſe eſtate they have in the ſame, have continued their poſſeſſion in the ſame, by three whole years next before without interruption, ſhall not be endamaged by force of any of the ſtatutes concerning forcible entry*, 8 H. 6. c. 9. ſ. 7. 1 Haw. 152.) I ſhall conſider thoſe ſeveral ſtatutes, with the interpretation that hath been put upon them, under the following heads:

I. What is a forcible entry.
II. What is a forcible detainer.
III. How the ſame are puniſhable by action at law.
IV. How puniſhable at the general ſeſſions.
V. How puniſhable by one juſtice.
VI. How puniſhable on a certiorari.
VII. How puniſhable as a riot.

I. What is a forcible entry.

By the 5 *R.* 2. *c.* 8. *None ſhall make any entry into any lands or tenements (or benefice of holy church*, 15 R. 2. c. 2. *or other poſſeſſions*, 8 H. 6. c. 9. ſ. 2.) *but where entry is given by the law; and in ſuch caſe not with ſtrong hand, nor with multitude of people, but only in peaceable and eaſy manner; on pain of impriſonment and ranſom at the king's will.*

Or other poſſeſſions] It ſeems clear, that no one can come within the danger of theſe ſtatutes, by a violence offered to another in reſpect of a *way*, or ſuch like eaſement, which is no poſſeſſion. And there ſeems to be no good authority, that an indictment will lie on this caſe for a *common*, or *office*. 1 *Haw.* 146.

Not with ſtrong hand, nor with multitude of people] It ſeems certain, that if one who pretends a title to lands, barely

barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for ſuch like purpoſe, without doing any act, which either expreſsly or impliedly amounts to a claim of ſuch lands, he cannot be ſaid to make an entry thereinto. 1 *Haw.* 144.

But it ſeemeth, that if a perſon enter into another man's houſe or ground, either with apparent violence offered to the perſon of any other, or furniſhed with weapons, or company, which may offer fear, tho' it be but to cut or take away another man's corn, graſs, or other goods, or to fell or crop wood, or do any other like treſpaſs, and though he do not put the party out of his poſſeſſion, yet it ſeemeth to be a forcible entry. *Dalt. c.* 126.

But if the entry were peaceable, and after ſuch entry made, they cut or take away any other man's corn, graſs, wood, or other goods, without apparent violence or force; tho' ſuch acts are counted a diſſeiſin with force, yet they are not puniſhable as forcible entries. *Id.*

But if he enter peaceably, and there ſhall by force or violence cut or take away any corn, graſs, or wood, or ſhall forcibly or wrongfully carry away any other goods there being, this ſeemeth to be a forcible entry puniſhable by theſe ſtatutes. *Id.*

So alſo ſhall thoſe be guilty of a forcible entry, who having an eſtate in land, by a defeaſible title, continue with force in the poſſeſſion thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* 145.

But he who barely agrees to a forcible entry made to his uſe, without his knowledge or privity, ſhall not be adjudged to make an entry within theſe ſtatutes, becauſe he no way concurred in, or promoted the force. *Id.*

And, in general, it ſeemeth clear, that to denominate the entry forcible, it ought to be accompanied with ſome circumſtances of actual *violence*, or *terror*; and therefore that an entry which hath no other force than ſuch as is implied by the law, in every treſpaſs whatſoever, is not within theſe ſtatutes. *Id.*

As to the matter of *violence*; it ſeems to be agreed, that an entry may be forcible, not only in reſpect of a violence actually done to the perſon of a man, as by beating him if he refuſe to relinquiſh his poſſeſſion, but alſo in reſpect of any other kind of violence in the manner of the entry, as by breaking open the doors of a houſe, whether any perſon be in it or not, eſpecially if it be a dwelling houſe,

and

and perhaps alſo by an act of outrage after the entry, as by carrying away the party's goods; but it ſeems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *ſtrong hand*, or *multitude of people*; and it hath been holden, that an entry into a houſe thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145.

In reſpect of the circumſtances of *terror*; it is to be obſerved, that wherever a man, either by his behaviour or ſpeech, at the time of his entry, gives thoſe who are in poſſeſſion juſt cauſe to fear that he will do them ſome bodily hurt, if they will not give way to him, his entry is eſteemed forcible, whether he cauſe ſuch a terror by carrying with him ſuch an unuſual number of attendants, or by arming himſelf in ſuch a manner, as plainly intimates a deſign, or by actually threatening to kill, maim, or beat thoſe who ſhall continue in poſſeſſion, or by giving out ſuch ſpeeches as plainly imply a purpoſe of uſing force, as if one ſay that he will keep his poſſeſſion in ſpite of all men, or the like. *Id.*

But it ſeems that no entry ſhall be judged forcible from any threatening to ſpoil another's *goods*, or to deſtroy his cattle, or to do him any other ſuch like damage, which is not perſonal. 1 *Haw.* 146.

However, it is clear that it may be committed by a ſingle perſon, as well as by twenty. 1 *Haw.* 146.

But nevertheleſs all thoſe who accompany a man, when he makes a forcible entry, ſhall be judged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It ſeemeth certain, that the ſame circumſtances of violence or terror which will make an entry forcible, will make a detainer forcible alſo. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw.* 146.

III. How they are puniſhable by action at law.

If any perſon be put out or diſſeiſed of any lands or tenements in forcible manner, or put out peaceably, and after holden out with ſtrong hand; the party grieved ſhall have aſſize of novel diſſeiſin, or writ of treſpaſs againſt the diſſeiſor; and

if

if he recovers, he ſhall have treble damages, and the defendant moreover ſhall make fine and ranſom to the king. 8 H. 6. c. 9. ſ. 6.

The party aggrieved ſhall have aſſize, &c.] But this action, being at the ſuit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he ſhall not be puniſhed by way of action; but yet he may be indicted upon the ſtatute, for the indictment is for the force and for the king, and he ſhall make fine to the king, although his right is never ſo good. *Dalt. c.* 129.

Treble damages] And this he ſhall recover as well for the meſne occupation, as for the firſt entry: And albeit he ſhall recover treble damages, yet he ſhall recover coſts, which ſhall be trebled alſo; for the word *damages* includeth coſts of ſuit. 1 *Inſt.* 257.

IV. How puniſhable at the general ſeſſions.

The party grieved, if he will loſe the benefit of his treble damages and coſts, may be aided and have the aſſiſtance of the juſtices at the general ſeſſions, by way of indictment (A) on the ſtatute of 8 *H.* 6. Which being found there, he ſhall be reſtored to his poſſeſſion, by a writ of reſtitution granted out of the ſame court to the ſheriff. *Dalt. c.* 129.

In the caption of which indictment, it will be ſufficient to ſay *juſtices aſſigned to keep the peace of our lord the king*, without ſhewing that they have authority to hear and determine felonies and treſpaſſes; for the ſtatute enables all juſtices of the peace, as ſuch, to take ſuch indictments. 1 *Haw.* 147.

And the tenement in which the force was made, muſt be deſcribed with convenient certainty; and muſt ſet forth that the defendant actually entered, and ouſted the party grieved; and continueth his poſſeſſion at the time of finding the indictment; otherwiſe he cannot have reſtitution, becauſe it doth not appear that he needeth it. 1 *Haw.* 147. 149, 150.

But if a man's wife, children, or ſervants do continue in the houſe or upon the land, he is not ouſted of his poſſeſſion; but his cattle being upon the ground, do not preſerve his poſſeſſion. *Dalt. c.* 132.

An indictment for forcible entry was quaſhed, for not ſetting forth that the party was ſeiſed or diſſeiſed, or what

eſtate he had in the tenement; for if he had only a term for years, then the entry muſt be laid, into the freehold of *A.* in the poſſeſſion of *B.* 3 Salk. 169.

V. How puniſhable by one juſtice.

For a more ſpeedy remedy, the party grieved may complain to any one juſtice; or to a mayor, ſheriff, or bailiff, within their liberties. 8 *H.* 6. *c.* 9.

But altho' one juſtice alone may proceed in ſuch caſes, yet it may be adviſeable for him, if the time for viewing the force will ſuffer it, to take to his aſſiſtance one or two more juſtices.

Concerning which power of one juſtice it is enacted as follows:

After complaint made to ſuch juſtice, by the party grieved, of a forcible entry made into lands, tenements, or other poſſeſſions, or forcible holding thereof, he ſhall within a convenient time, at the coſts of the party grieved, (without any examining or ſtanding upon the right or title of either party,) *take ſufficient power of the county, and go to the place where ſuch force is made.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2. Dalt. c. 44.

Complaint —— *by the party grieved*] Yet theſe words do not inforce any neceſſity of ſuch a complaint; for it is holden, that the juſtice may and ought to proceed, upon any information or knowledge thereof whatſoever, though no complaint at all be brought unto him, by any party grieved thereby. *Lamb.* 147.

Power of the county] All people of the county, as well the ſheriff as other, ſhall be attendant on the juſtices, to arreſt the offenders; on pain of impriſonment and fine to the king. 15 *R.* 2. *c.* 2.

And if the doors be ſhut, and they within the houſe ſhall deny the juſtice to enter, it ſeems he may break open the houſe, to remove the force. *Dalt. c.* 44.

And if after ſuch entry made the juſtice *ſhall find ſuch force; he ſhall cauſe the offenders to be arreſted.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2.

He ſhall alſo take away their weapons and armour, and cauſe them to be appraiſed, and after to be anſwered to the king as forfeited, or the value thereof. *Dalt. c.* 44.

Alſo ſuch juſtice ought to *make a record* (B) *of ſuch force by him viewed*; which record ſhall be a ſufficient conviction of the offenders, and the parties ſhall not be allowed to traverſe it: And this record, being made out of the

the ſeſſions, by a particular juſtice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and the other part he may keep himſelf. For this view of the force by the juſtice, being a judge of record, maketh his record thereof, in the judgment of the law, as ſtrong and effectual, as if the offenders had confeſſed the force before him; and touching the reſtraining of traverſe, more effectual, than if the force had been found by a jury, upon the evidence of others. (This is, as to the fine and impriſonment, but not as to reſtitution.) 15 *R.* 2. *c.* 2. *Dalt. c.* 44.

And the offenders being arreſted (as before is ſaid), *ſhall be put in the next gaol* (C) *there to abide convict by the record of the ſame juſtice, until they have made fine and ranſom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is ſaid, that the juſtice hath no power to commit the offender to gaol, unleſs he do it upon his own view of the fact, and not upon the jury finding the ſame afterwards. *Dalt. c.* 44. 1 *Haw.* 142.

And if ſuch offenders, being in the houſe at the coming of the juſtice ſhall make no reſiſtance, nor make ſhew of any force, then the juſtice cannot arreſt or remove them at all upon ſuch view. *Dalt. c.* 44.

But howſoever if the force be found afterwards, by the inquiry of the jury, the juſtice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after ſend them to the gaol, until they have found ſureties for the peace. *Id.*

Note; Mr. *Dalton*, in this place, ſays, *good behaviour*, which I have preſumed to alter to *the peace*, as deeming it much the ſafer; and not being ſufficiently ſatisfied concerning the power of a juſtice of the peace to bind to the good behaviour in the like caſes, which power Mr. *Dalton* hath enlarged more than all other authors, without any aſſiſtance from the commiſſion of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] *H.* 1 *G.* 2. *K.* and Sir *Edm. Elwell.* He was brought up upon a *habeas corpus*, with a return of the cauſe of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to diſcharge him upon exceptions to the commitment, the court refuſed to enter into the conſideration of them, till the conviction was likewiſe regularly removed before them. But by conſent he was bailed in the mean time.

time. And this term the conviction being before the court, it appeared that there was no fine ſet by the juſtices, and it was therefore moved to be quaſhed. It was agreed on both ſides, that there ſhould be a fine; but it was inſiſted, that it being now before the king's bench by a certiorari, they might ſet the fine. But by the court: We are not to execute the judgment of an inferior court. The conviction is to be upon view, and they who view the nature of the force are the propereſt judges what fine to ſet; and though a certiorari ſhould come before the fine is ſet, yet it would be no contempt in the juſtices to complete their judgment by ſetting one. *Lambard* indeed was of opinion, that the juſtices could not ſet the fine at all; but upon what foundation we can never imagine. The juſtices are not bound to do it upon the ſpot, but may take a reaſonable time to conſider of the fine; becauſe by the words of the act, the commitment is to be, till he has paid the fine. The conviction muſt be quaſhed, and the defendant diſcharged. *Str.* 794. L. *Raym.* 1515. 1 *Seſſ. C.* 280.

And the ſame was likewiſe ſolemnly reſolved in *Leighton*'s caſe; and that the juſtice may aſſeſs the ſame, either before the commitment or after. 1 *Haw.* 142.

And the fine muſt be aſſeſſed upon every offender ſeverally, and not upon them jointly; and the juſtice ought to eſtreat the fine, and to ſend the eſtreat into the exchequer, that from thence the ſheriff may be commanded to levy it for his majeſty's uſe. *Dalt. c.* 44.

But upon payment of the fine to the ſheriff, or upon ſureties found (by recognizance) for the payment thereof, it ſeemeth that the juſtice may deliver the offenders out of priſon again at his pleaſure. *Dalt. c.* 44.

And ſo much concerning removing the force: But the party ouſted cannot be reſtored to his poſſeſſion by the juſtice's view of the force; nor unleſs the ſame force be found by the inquiry of a jury.

Concerning which it is enacted as follows: *And tho' that the perſons making ſuch entry be preſent, or elſe departed before the coming of the juſtice; he may notwithſtanding in ſome good town next to the tenements ſo entered, or in ſome other convenient place by his diſcretion* (and that, tho' he go not to ſee the place where the force is; *Dalt. c.* 44.) *have power to inquire by the people of the county, as well of them that make ſuch forcible entry, as of them which hold the ſame with force.* 8 H. 6. c. 9. ſ. 3.

In

In order to which, *the juſtice ſhall make his precept* (D) *to the ſheriff, commanding him in the king's behalf, to cauſe to come before him, ſufficient and indifferent perſons, dwelling next about the lands ſo entered, to inquire of ſuch entries; whereof every man ſhall have lands or tenements of* 40 *s. a year, above reprizes. And the ſheriff ſhall return iſſues on every of them, at the day of the firſt precept returnable* 20 *s. and at the ſecond day* 40 *s. and at the third day* 100 *s. and at every day after double. And the ſheriff making default, ſhall on conviction before the ſame juſtice, or before the judge of aſſize, forfeit* 20 *l. half to the king and half to him who ſhall ſue, with coſts; and moreover ſhall make fine and ranſom to the king.* ſ. 4, 5.

Before the ſame juſtice] And the juſtice may proceed againſt the ſheriff for this default, either by bill at the ſuit of the party, or by indictment at the ſuit of the king. *Dalt. c.* 44.

And the defendant alſo, if he is not preſent, ought to be called to anſwer for himſelf; for it is implied by natural juſtice in the conſtruction of all laws, that no one ought to ſuffer any prejudice thereby, without having firſt an opportunity of defending himſelf. 1 *Haw.* 154.

And it ſeems to be ſettled at this day, that if the defender tender a *traverſe* of the force, the juſtice ought not to make any reſtitution, till the traverſe be tried. *Id.*

The defendant may alſo by the 31 *Eliz. c.* 11. plead *three years poſſeſſion*; whereby it is enacted, *that no reſtitution upon an indictment of forcible entry, or holding with force, ſhall be made, if the perſon indicted have had the occupation, or been in quiet poſſeſſion for three years together next before the indictment found, and his eſtate therein not determined; and reſtitution ſhall ſtay till that be tried: and if it is found againſt the party indicted, he ſhall pay ſuch coſts and damages as the judges or juſtices ſhall aſſeſs; to be recovered as coſts and damages in judgment on other actions.*

And it hath been holden that the plea of ſuch poſſeſſion is good, without ſhewing under what title, or of what eſtate ſuch poſſeſſion was; becauſe it is not the title, but poſſeſſion only, which is material in this caſe. 1 *Haw.* 152.

And it was holden by the court in *Leighton*'s caſe, that if the defendant ſhall either traverſe the entry or the force, or plead that he has been three years in poſſeſſion, the juſtice may ſummon a jury for the trial of ſuch traverſe, for it is impoſſible to determine it upon view; and if the juſtice have no power to try it, it would be eaſy for any

one to elude the ſtatute by the tender of ſuch a traverſe, and therefore by a neceſſary conſtruction the juſtice muſt needs have this power as incidental to what is expreſsly given him. 1 *Haw.* 142.

And this traverſe muſt be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* muſt be awarded, a jury returned, the iſſue tried, a verdict found, and judgment given, and coſts and damages awarded; and there muſt be a record, which muſt be in writing, to do all this, and not a verbal plea. *Dalt. c.* 133. 1 *Haw.* 154.

Upon which traverſe tendered, the juſtice ſhall cauſe a new jury to be returned by the ſheriff, to try the traverſe; which may be done the next day, but not the ſame day. *Dalt. c.* 133.

And it ſeemeth, that he who tendreth the traverſe, ſhall bear all the charges of the trial; and not the king, or the party proſecuting. *Id.*

And *if ſuch forcible entry or detainer be found* (E) *before ſuch juſtice, then the ſaid juſtice ſhall cauſe to reſeiſe* (F) *the lands and tenements ſo entered or holden, and ſhall reſtore the party put out, to the full poſſeſſion of the ſame.* 8 H. 6. c. 9. ſ. 3.

The ſaid juſtice] It ſeems to be agreed, that no other juſtices of the peace, except thoſe before whom the indictment ſhall be found, ſhall have any power either at the ſeſſions or out of it, to make any award of reſtitution. 1 *Haw.* 152.

Shall cauſe to reſeiſe] And the juſtice may break open the houſe by force, to reſeiſe the ſame; and ſo may the ſheriff do, having the juſtice's warrant. *Dalt. c.* 44.

Reſeiſe] That is, ſhall remove the force, by putting out all ſuch offenders as ſhall be found in the houſe, or upon the lands, that entred or held with force. *Dalt. c.* 130.

And ſhall reſtore the party put out] And this he may do in his own proper perſon; or he may make his warrant to the ſheriff to do it. *Dalt. c.* 44. 1 *Haw.* 151, 2.

And by 21 *J. c.* 15. it is enacted, *That ſuch judges, juſtices, or juſtice of the peace, as may give reſtitution unto tenants of any eſtate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's ſervice, tenants by* elegit, *ſtatute merchant and ſtaple,*

of

of lands or tenements by them ſo holden, which ſhall be entred upon by force, or holden of them by force.

VI. How puniſhable on a certiorari.

Although regularly the juſtices only who were preſent at the inquiry, and when the indictment was found, ought to award reſtitution; yet if the record of the preſentment or indictment ſhall be certified by the juſtice or juſtices into the king's bench, or the ſame preſentment or indictment be removed or certified thither by certiorari, the juſtices of that court may award a writ of reſtitution to the ſheriff, to reſtore poſſeſſion to the party expelled; for the juſtices of the king's bench have a ſupreme authority in all caſes of the crown. *Dalt. c.* 44.

Alſo where upon a removal of the proceedings into the king's bench the conviction ſhall be quaſhed, the court will order reſtitution to the party injured. As in the caſe of *K.* and *Jones*, *M.* 8 *G.* A conviction of forcible entry was quaſhed for the old exception of *meſſuage* or *tenement*, by reaſon of the uncertainty; but the reſtitution was oppoſed, on an affidavit that the party's title (which was by leaſe) was expired ſince the conviction. But the court ſaid, they had no diſcretionary power in this caſe, but were bound to award reſtitution on quaſhing the conviction. *Str.* 474.

VII. How puniſhable as a riot.

If a forcible entry or detainer ſhall be made by three perſons or more, it is alſo a riot, and may be proceeded againſt as ſuch, if no inquiry hath before been made of the force. *Dalt. c.* 44.

A. Indictment for a forcible entry and detainer.

Weſtmorland. *THE jurors for our lord the king upon their oath preſent, that* A. I. *late of the pariſh of* —— *in the county aforeſaid, gentleman, on the* —— *day of* —— *in the* —— *year of the reign of* —— *was poſſeſſed of a certain meſſuage, with the appurtenances, ſituate, lying, and being in* —— *in the pariſh aforeſaid, in the county aforeſaid, for a certain term of years, then and ſtill to come, and unexpired, and being ſo poſſeſſed thereof, one* A. O. *late of* —— *in the ſaid county, yeoman, afterwards, to wit, the ſaid* —— *day of* —— *in the*

year aforeſaid, into the ſame meſſuage, with the appurtenances aforeſaid, in —— aforeſaid, in the pariſh and county aforeſaid with force and arms, and with ſtrong hand, unlawfully did enter, and the ſaid A. I. *from the peaceable poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, then and there with force and arms, and with ſtrong hand, unlawfully did expel and put out, and the ſaid* A. I *from the poſſeſſion thereof, ſo as aforeſaid, with force and arms, and with ſtrong hand, being unlawfully expelled and put out, the ſaid* A. O. *him the ſaid* A. I. *from the aforeſaid —— day of —— in the year aforeſaid, until the day of the taking this inquiſition, from the poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, with force and arms, and with ſtrong hand, unlawfully and injuriouſly then and there did keep out, and doth ſtill keep out, to the great damage of the ſaid* A. I. *againſt the peace of our ſaid lord the king, and againſt the form of the ſtatutes in that caſe made and provided.*

Note; If it is a freehold, then the party muſt be ſaid to be *ſeiſed* thereof in his demeſne as of fee; and conſequently he muſt be thereof *diſſeiſed:* otherwiſe if it is of a leſſer eſtate, of which he is not properly ſaid to be *ſeiſed*, but poſſeſſed thereof at the will of the lord, according to the cuſtom of the manor, or the like, and then he muſt be *expelled, ejected, amoved*, or the like.

B. Record of a forcible detainer upon view.

Note; The books upon the office of a juſtice of the peace generally ſet forth, that the record ought to be in the preſent tenſe, and not in the time paſt (and herewith do accord the adjudged caſes in the court of king's bench, *Str.* 443.); yet nevertheleſs they all exhibit the form of a record in the time paſt, and not in the preſent: Therefore I have taken the liberty to alter the ſame, from the record in L. *Raymond* of the conviction of Sir *Edm. Elwell* aforeſaid, and others; adding the fine thereunto, for the want of which that conviction was quaſhed. And I have given the form of a record of a forcible *detainer*, rather than a forcible *entry*, becauſe the juſtice for the moſt part cannot be ſuppoſed to be preſent at the entry, as not having knowledge thereof till after the entry is made.

Kent, to wit. *BE it remembered, that on the 15th of* September, *in the firſt year of the reign of our ſovereign lord* George

George *the ſecond, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* Beckingham, *in the county of* Kent *aforeſaid,* Eliz. Elwell *complaineth to us* Sir E. Bettenſon *baronet,* P. Burrel, *and* W. Paſſenger *eſquires, three of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, that Sir* Edm. Elwell, *late of* London, *baronet,* Joſeph Billers, *late of* ——— *and* Daniel Monty, *late of* ——— *into the meſſuage of her the ſaid* E. E. *being the manſion houſe of her the ſaid* E. E. *called* Langley houſe, *ſituate within the pariſh of* Beckingham *aforeſaid, did enter, and her the ſaid* E. E. *of the meſſuage aforeſaid, whereof the ſaid* E. E. *at the time of the entry aforeſaid, was ſeiſed as of the freehold of her the ſaid* E. E. *for the term of her life, unlawfully ejected, expelled, and amoved, and the ſaid meſſuage from her the ſaid* El. E. *unlawfully, with ſtrong hand and armed power, do yet hold and from her detain, againſt the form of the ſtatute in ſuch caſe made and provided; whereupon the ſame* El. E. *then to wit, on the ſaid* 15*th day of* Sept. *at the pariſh of* B. *aforeſaid, prayeth of us, ſo as aforeſaid being juſtices, to her in this behalf, that a due remedy be provided, according to the form of the ſtatute aforeſaid: Which complaint and prayer by us the aforeſaid juſtices being heard, we the aforeſaid* E. B. *baronet,* P. B. *and* W. P. *eſquires, juſtices aforeſaid, to the meſſuage aforeſaid perſonally have come, and do then and there find and ſee the aforeſaid* Ed. E., J. B., *and* D. M. *the aforeſaid meſſuage, with force and arms, unlawfully, with ſtrong hand and armed power, detaining, againſt the form of the ſtatute in ſuch caſe made and provided, according as ſhe the ſame* El. E. *ſo as aforeſaid hath unto us complained: Therefore it is conſidered by us the aforeſaid juſtices, that the aforeſaid* Edmund Elwell, Joſeph Billers, *and* Daniel Monty, *of the detaining aforeſaid with ſtrong hand, by our own proper view then and there as aforeſaid had, are convicted, and every of them is convicted, according to the form of the ſtatute aforeſaid: Whereupon we the juſtices aforeſaid, upon every of the aforeſaid* Ed. E., J. B., *and* D. M. *do ſet and impoſe ſeverally a fine of* 10*l. of good and lawful money of* Great Britain, *to be paid by them and every of them ſeverally to our ſaid ſovereign lord the king, for the ſaid offences; and do cauſe them, and every of them then and there to be arreſted; and the ſame* Ed. E., J. B., *and* D. M. *being convicted, and every of them being convicted upon our own proper view, of the detaining aforeſaid, with ſtrong hand as is aforeſaid, by us the aforeſaid juſtices are committed, and*

every of them is committed, to the gaol of our said lord the king, at Maidstone, *in the county of* Kent *aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively, to our said lord the king, for their respective offences aforesaid. Concerning which the premises aforesaid, we do make this our record. In witness whereof, we the aforesaid* E. B. *baronet,* P. B. *and* W. P. *esquires, the justices aforesaid, to this record our hands and seals do set at the parish of* B. *aforesaid in the county of* Kent *aforesaid, on the* 15*th day of* Sept. *in the first year aforesaid of the reign of our said sovereign lord the now king.*

C. Mittimus for forcible detainer.

Westmorland. EDWARD Hassel *esquire, one of the justices of our sovereign lord the king's majesty, assigned to keep the peace within the said county of* W. *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the keeper of his majesty's gaol at —— in the said county, and to his deputy and deputies there, and to every of them, greeting: Whereas upon complaint made unto me this present day, by* A. I. *of —— in the said county, yeoman, I went immediately to the dwelling house of the said* A. I. *at —— aforesaid in the said county, and there found* A. O. *late of —— labourer,* B. O. *late of the same, weaver, and* C. O. *late of —— butcher, forcibly, with strong hand and armed power, holding the said house, against the peace of our said lord the king, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said* A. O., B. O. *and* C. O. *convicted of the said forcible holding, by mine own view, testimony, and record; commanding you in his said majesty's name to receive them into your said gaol, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sum of* 10*l. of good and lawful money of* Great Britain, *to our said sovereign lord the king which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at —— aforesaid, in the county aforesaid, under my seal, the —— day of —— in the —— year of the reign of our said sovereign lord king* George *the third.*

Note;

Note; By the forms in all the books, all the offenders ſtand committed until all have paid, ſo as that the firſt ſhall not be diſcharged on payment of his own fine, but continue until all the reſt have paid likewiſe; which ſeems unreaſonable, and is not warranted by the ſtatute.

D. Precept to the ſheriff to return a jury.

Weſtmorland. RICHARD Whinfield, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the ſheriff of the ſaid county, greeting: On behalf of our ſaid lord the king, I command you, that you cauſe to come before me at —— in the county aforeſaid, on the —— day of —— next enſuing, twenty four ſufficient and indifferent men, of the neighbourhood of —— aforeſaid, in the county aforeſaid, every of whom ſhall have lands or tenements of 40 s. yearly at the leaſt, above reprizes, to inquire upon their oaths for our ſaid lord the king, of a certain entry made with a ſtrong hand (as it is ſaid) into the meſſuage of one* A. I. *at —— aforeſaid, in the county aforeſaid, againſt the form of the ſtatute in ſuch caſe made and provided. And you are to return upon every of the jurors by you in this behalf to be impannelled, 20 s. of iſſues at the aforeſaid day. And have you then there this precept. And this you ſhall in no wiſe omit, upon the peril that ſhall thereof enſue Witneſs the ſaid* R. W. *at —— in the county aforeſaid, the —— day of —— in the —— year of the reign of ——.*

The jurors' oath.

YOU ſhall true inquiry and preſentment make of all ſuch things as ſhall come before you, concerning a forcible entry [or *detainer*] *ſaid to have been lately committed in the dwelling houſe of —— yeoman, at —— in this county; you ſhall ſpare no one for favour or affection, nor grieve any one for hatred or ill will, but proceed herein according to the beſt of your knowledge, and according to the evidence that ſhall be given to you: So help you God.*

The oath that A. F. *your foreman hath taken on his part, you and every of you ſhall truly obſerve, and keep on your parts: So help you God.*

E. The inquisition, indictment, or finding of the jury.

Westmorland. *AN inquisition for our sovereign lord the king, indented and taken at —— in the said county, the —— day of —— in the —— year of the reign of —— by the oaths of —— good and lawful men of the said county, before* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that* A. I. *of —— aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne as of fee* [if it is not freehold, then say *possessed*] *of and in one messuage, with the appurtenances, in —— aforesaid, in the county aforesaid, and his said possession* [*and seisin*] *so continued until* A. O. *late of —— yeoman,* B. O. *late of the same, yeoman, and* C. O. *lat of the same, yeoman, and other malefactors unknown, the —— day of —— now last past, with strong hand and armed power into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him he said* A. I. *thereof disseised, and with strong hand expelled; and him the said* A. I. *so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said —— day of —— until the day of the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said lord the king, and against the form of the statute in such case made and provided.*

We whose names are hereunto set, being the jurors aboveſaid, do upon the evidences now produced before us, find the inquisition aforesaid true.

A. B.
C. D. &c.

F. Warrant to the sheriff for restitution.

Westmorland. *MARTIN Dunn, esquire, one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting: Whereas by an inquisition taken before me the justice aforesaid, at —— in the county aforesaid, on this present —— day of —— in the —— year of the reign of —— upon the oaths*

oaths of —— and by virtue of the ſtatutes made and provided in caſes of forcible entry and detainer, it is found that A. O. *late of —— yeoman, and* B. O. *late of —— yeoman, on the —— day of —— now laſt paſt, into a certain meſſuage, with the appurtenances, of* A. I. *of —— aforeſaid, in the county aforeſaid, gentleman, ſituate, lying, and being at —— aforeſaid, in the county aforeſaid, with force and arms did enter, and him the ſaid* A. I. *thereof then with ſtrong hand did diſſeiſe and drive out, and him the ſaid* A. I *thus driven out from the aforeſaid meſſuage, with the appurtenances, from the —— day of —— aforeſaid, to this preſent day of the taking of the ſaid inquiſition, with ſtrong hand and armed force did keep out, and do yet keep out, as by the inquiſition aforeſaid more fully appeareth of record: Therefore on the behalf of our ſaid ſovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the ſaid meſſuage and other the premiſes, and the ſame with the appurtenances you cauſe to be reſeiſed, and that you cauſe the ſaid* A. I. *to be reſtored and put into his full poſſeſſion thereof, according as he, before the entry aforeſaid, was ſeiſed, according to the form of the ſaid ſtatutes. And this you ſhall in no wiſe omit, on the penalty thereon incumbent. Given under my hand and ſeal at —— in the ſaid county, the —— day of —— in the —— year of the reign of ——.*

Foreign Service.

IF any ſubject ſhall inliſt or enter himſelf, or ſhall engage to go beyond the ſeas, or embark with intent to inliſt and enter himſelf, although no inliſting money be actually paid to him; or if any perſon ſhall procure any ſubject to inliſt or enter himſelf, or hire or retain any ſubject, with intent to cauſe him to inliſt or enter himſelf, or retain, engage, or procure any ſubject (though no inliſting money be paid) to go beyond the ſeas, or embark with intent and in order to be inliſted to ſerve any foreign prince, ſtate, or potentate, as a ſoldier, without his majeſty's leave; he ſhall be guilty of felony without benefit of clergy. 9 *G.* 2. *c.* 30. *ſ.* 1. 29 *G.* 2. *c.* 17. *ſ.* 4.

And offences committed out of the realm may be tried in any county in *England.* 9 *G.* 2. *c.* 30. *ſ.* 2.

But

But if any perſon ſo inliſted, or inticed to go beyond the ſeas in order to be inliſted, as a non-commiſſion officer or private ſoldier, in any foreign ſervice, ſhall in 14 days voluntarily diſcover upon oath, before any juſtice or other civil magiſtrate, the perſon by whom he was inliſted or enticed, ſo as he be convicted, he ſhall be indemnified. *ſ.* 3.

Foreſtalling, ingroſſing, and regrating.

Derivation.

FOreſtalling, (*foreſtællan*, or *foreſtallan*,) in the Engliſh Saxon, ſignifieth properly to *market before the public*, or to *prevent the public market*; and metaphorically, to *intercept* in general; and ſeemeth derived from *fore*, which is the ſame as *before*, and *ſtalle*, a ſtanding place or department; from whence ſprang the ancient word *ſtallage*, which ſignifieth money paid for erecting a ſtall or ſtand, for the ſelling of goods in a fair or market:

Ingroſſing is from *in*, and *groſs*, great or whole:

And *regrating*, from *re*, again, and the French *grater*, to *grate* or ſcrape; and ſignifieth the ſcraping or dreſſing of cloth or other goods, in order for ſelling the ſame again.

All the ſtatutes againſt thoſe offences are repealed.

There have been ſeveral ſtatutes made from time to time againſt theſe offences in general, and alſo ſpecially with reſpect to particular ſpecies of goods according to their ſeveral circumſtances; all of which from the 5 & 6 *Ed.* 6. *c.* 14. and others downwards made for enforcing the ſame, are repealed by the 12 *G.* 3. *c.* 71. But theſe offences ſtill continue puniſhable upon indictment at the common law by fine and impriſonment.

But remain puniſhable at common law.

And at the common law all endeavours whatſoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by ſpreading falſe rumours, or by buying things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame market, or by any other ſuch like devices, are highly criminal, and puniſhable by fine and impriſonment. 1 *Haw.* 234, 5.

By

By the common law a merchant bringing victuals into the realm, may ſell the ſame in groſs: but no perſon can lawfully buy within the realm any merchandize in groſs, and ſell the ſame in groſs again, without being liable to be indicted for the ſame. 3 *Inſt.* 196.

And the bare ingroſſing of a whole commodity, with an intent to ſell it at an unreaſonable price, is an offence indictable at common law, whether any part thereof be ſold by the ingroſſer or not. 1 *Haw.* 235.

And ſo jealous is the common law of all practices of this kind, that it will not ſuffer corn to be ſold in the ſheaf; perhaps for this reaſon, becauſe by ſuch means the market is in effect foreſtalled. *Id.*

By the ſtatute of the 5 & 6 *Ed.* 6. *c.* 14. theſe offences were particularly deſcribed; which ſtatute, tho' now repealed as aforeſaid, yet may be of uſe as containing a parliamentary expoſition of the reſpective terms denoting the ſeveral particular offences; and is as follows:

Whoſoever ſhall buy or cauſe to be bought, any merchandize, victual, or any other thing whatſoever, coming by land or by water toward any market or fair, to be ſold in the ſame, or coming toward any city, port, haven, creek, or road, from any parts beyond the ſea to be ſold; or make any bargain, contract or promiſe, for the having or buying the ſame, or any part thereof, ſo coming as is aforeſaid, before the ſaid merchandize, victuals, or other things ſhall be in the market, fair, city, port, haven, creek, or road, ready to be ſold; or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon for the inhancing of the price, or dearer ſelling of any thing above mentioned; or elſe diſſuade, move, or ſtir any perſon coming to the market or fair, to abſtain or forbear to bring or convey any of the things above rehearſed, to any market, fair, city, port, haven, creek, or road to be ſold, as aforeſaid, —— *ſhall be deemed a* foreſtaller:

Whoſoever ſhall ingroſs, or get into his hands by buying, contracting, or promiſe taking, other than by demiſe, grant, or leaſe of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victuals whatſoever, to the intent to ſell the ſame again, ſhall be deemed an unlawful ingroſſer.

And whoſoever ſhall by any means regrate, obtain, or get into his hands or poſſeſſion, in a fair or market, any corn, wine, fiſh, butter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine, pigs, geeſe, capons, hens, chickens, pigeons, conies, or other dead victual whatſoever, that ſhall be brought to any

fair or market to be ſold, and do ſell the ſame again in any fair or market holden or kept in the ſame place, or in any other fair or market within four miles thereof, ſhall be deemed a regrater.

Form of an indictment for foreſtalling.

Weſtmorland. *THE jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforeſaid, in the county aforeſaid, did buy and cauſe to be bought of and from one* A. S. *twenty oxen, for the ſum of* 200 *l. of lawful money of* Great Britain, *as he the ſaid* A. S. *then and there was driving the ſaid twenty oxen towards the market of* M. *to ſell the ſaid twenty oxen in the ſaid market, and before the ſaid twenty oxen were brought into the ſaid market, where the ſame ſhould be ſold; in contempt of our ſaid lord the king and his laws; to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for ingroſſing.

Weſtmorland. *THE jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* —— *year of the reign of* ——— *at* ——— *aforeſaid, in the county aforeſaid, did ingroſs and get into his hands, by buying of and from one* A. S. 50 *quarters of wheat, to the intent to ſell the ſame again; to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for regrating.

Weſtmorland. *THE jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* —— *year of the reign of* ——— *at* ——— *aforeſaid, in the county aforeſaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands*

and

and poſſeſſion ten geeſe and twenty chickens, of and from one A. S. *for the ſum of* 30*s. of lawful money of* Great Britain *(the ſaid geeſe and chickens then being brought to the ſaid market by the ſaid* A. S. *to be ſold): and that afterwards, to wit, on the ſame —— day of —— in the year aforeſaid, he the ſaid* A. O. *at —— aforeſaid, in the county aforeſaid, in the ſaid market there, unlawfully did regrate the ſaid geeſe and chickens, and ſell the ſame again to one* A. B. *for the ſum of* 40*s. of like lawful money of* Great Britain, *in contempt of our ſaid lord the king and his laws, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Foreſts. See Game.

Forfeiture.

The forfeitures for particular offences may be found under their reſpective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.
II. Of loſs of dower.
III. Of corruption of blood.

I. Of forfeiture of lands and goods.

Forfeiture of lands.

IT ſeems agreed, that by the common law, all lands of inheritance, whereof the offender was ſeiſed in his own right, and alſo all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treaſon, and to the lord of whom they are immediately holden, by an attainder of petit treaſon or felony. 2 *Haw.* 448.

But it ſeems clear, that the lord cannot enter into the lands holden of him, upon an eſcheat for petit treaſon or felony, without a ſpecial grant, till it appear by due proceſs, that the king hath had his prerogative of the year, day, and waſte. *Id.*

Concerning

Concerning which year, day, and waſte, it is enacted by the 17 *Ed.* 2. *c.* 16. that the king ſhall have the goods of all felons attainted, and fugitives, whereſoever they be found. And if they have freehold, it ſhall be forthwith taken into the king's hands, and the king ſhall have all profits of the ſame by one year and one day; and the land ſhall be waſted and deſtroyed in the houſes, woods, and gardens, and in all manner of things belonging to the ſame land. And after the king hath had the year, day, and waſte, the land ſhall be reſtored to the chief lord of the fee, unleſs that he fine before with the king for the year, day, and waſte.

Forfeiture of goods.

As to forfeiture of goods, it ſeems agreed, that all things whatſoever, which are comprehended under the notion of a perſonal eſtate, whether they be in action or poſſeſſion, which the party hath, or is entitled to, in his own right, and not as executor or adminiſtrator to another, are liable to ſuch forfeiture, in the following caſes:

(1) Upon a conviction of treaſon or felony. 2 *Haw.* 450.

(2) Upon a flight found before the coroner, on view of a dead body. *Id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *Id.*

(4) Alſo a perſon indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in caſe of grand larceny. 1 *H. H.* 530. 2 *Haw.* 451.

But it is certain that the party may in all caſes, except that of the coroner's inqueſt, traverſe the finding of the flight. Alſo it ſeems agreed, that the particulars of the goods found to be forfeited may be alſo traverſed. 2 *Haw.* 451.

(5) Upon a preſentment by the oaths of 12 men, that a perſon arreſted for treaſon or felony, fled from, or reſiſted thoſe who had him in cuſtody, and was killed by them in the purſuit or ſcuffle. *Id.*

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods ſo waived, whether they be his own, or the goods of others ſtolen by him, which ſhall not be reſtored to the right owners but upon a proper proſecution. *Id.*

(7) Alſo, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchaſing other goods. 2 *H. H.* 388, 389.

But

But on burning in the hand, he ought to be immediately reſtored to the poſſeſſion of his lands. 2 *H. H.* 389.

(8) If a perſon be found *felo de ſe*, he ſhall forfeit his goods and chattels, but not his lands. 3 *Inſt.* 54. 5 *Co.* 109.

Upon outlawry in treaſon of felony, the offender ſhall loſe and forfeit as much as if he had appeared, and judgment had been given againſt him, as long as the outlawry is in force. *Wood. b.* 4. *c.* 5. Forfeiture upon outlawry,

And thoſe that tarry till the exigent, in treaſon, felony, or petit larcency, forfeit their goods, though they render themſelves to juſtice, and are acquitted; for it was a flight in law. *Id.*

But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unleſs he fled; for that is a diſtinct forfeiture, although the party be not guilty of the fact. 1 *H. H.* 493. Forfeitures in *ſe defendendo*.

It ſeems agreed, that the forfeiture, upon an attainder either of treaſon or felony, ſhall have relation to the time of the offence, for the avoiding of all ſubſequent alienations of the *land*; but to the time of the conviction or flight found only, as to *chattels*; unleſs the party were killed in flying or reſiſting, in which caſe it is ſaid, that the forfeiture of the chattels ſhall relate to the time of the offence. 2 *Haw.* 454. To what time the forfeiture ſhall relate.

But though the goods of an offender be not forfeited till the conviction or flight found by inqueſt, yet whether they may be ſeized upon the offence committed, hath been controverted; concerning which L. *Hale* ſaith thus: What is to be done with the felon's goods before forfeiture.

It ſeemeth clear, that at the common law, if a man had committed felony or treaſon, or tho' poſſibly he had committed none, yet if he had been indicted, the ſheriff, coroner, or other officer, could not ſeize and carry away the goods of the offender or party accuſed:

Again, he could not in that caſe have removed the goods out of the cuſtody of the offender or party accuſed, and deliver them over to the conſtables or to the *villata*, to anſwer for them:

But if the party were indicted, the ſheriff or other officer might make a ſimple ſeizure of them only to inventory and appraiſe them, and leave them to the cuſtody of the ſervants or bailiff of the party indicted, in caſe he would give ſecurity againſt their being embezzled, or in default thereof he might deliver them to the conſtable or will to be anſwerable for them, but yet ſo that the party accuſed

accuſed and his family have ſufficient out of them for their livelihood and maintenance:

And poſſibly the ſame law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of ſeizure might have been made, whether he committed the felony or not:

But in caſe there were no indictment, then it is at the peril of him that ſeizeth, if he committed not the felony:

And then as to the ſtatute of 1 *R.* 3. *c.* 3. it is as follows: *No ſheriff or other perſon ſhall take or ſeize the goods of any perſon arreſted or impriſoned for ſuſpicion of felony, before he be convicted or attainted, or before the goods be otherwiſe forfeited; on pain of double value to the party grieved:*

Mr. *Stamford* thinks this is but in affirmance of the common law, only that it gives a penalty; but it ſeems to be ſomewhat more than ſo, for this prohibits the ſeizure of the goods of a party impriſoned, tho' he were alſo indicted, but not yet convicted, where unqueſtionably the common law allowed ſuch a ſeizure, if the party or his friends did not ſecure the forthcoming of the goods, where the party was indicted:

But upon this ſtatute theſe things are conſiderable; 1. As to perſons at large, it ſeems to me (ſays he), that if they fly not, there can be no ſeizure at all made, whether they are indicted or not; for the ſtatute did not intend a greater privilege to a party impriſoned, than to him that is at large. 2. That if he be at large, and *fly* for it, yet his goods cannot be ſeized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraiſed, and inventoried, in the houſe or place where they lie:

And yet I know not how it comes to paſs, ſays he, the uſe of ſeizing the goods of perſons accuſed of felony, tho' impriſoned or not impriſoned, hath ſo far obtained notwithſtanding this ſtatute, that it paſſeth for law and common practice, as well by conſtables, ſheriffs, and other the king's officers, as by lords of franchiſes, that there is nothing more uſual:

Upon the whole, he ſays, that the opinion of my L. *Coke*, in his 3 *Inſt.* 228. hath truly ſtated the law, at leaſt as it ſtands upon the ſtatute of 1 *R.* 3. *viz.* 1. That *before* the indictment, the goods of any perſon cannot be ſearched, inventoried, or in any ſort ſeized. 2. That *after* the indictment,

indictment, they cannot be ſeized and removed, or taken away, before conviction or attainder:

But then it may be ſaid, to what purpoſe may they be ſearched and inventoried after indictment, if they may not be removed, but are equally liable to embezzling as before:

I think (he ſays) he is not bound to find ſureties, neither hath the officer at this day any power to remove them in default of ſureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unleſs in caſe of a ſecond *capias* on the 25 *Ed.* 3. *c.* 14.) for the priſoner or party indicted may ſell them *bona fide*; and if he may do ſo, the vendee may take them, and the *villata* cannot refuſe the delivering of them to the vendee, tho' the goods had been delivered to them:

But there is this advantage by the viewing and appraiſing, that thereby the king is aſcertained what the goods are, and may purſue them that take or embezzle them, by information, (if the party happen to be convict,) and try the property with them, whether they are really ſold, or ſold only fraudulently without valuable conſideration, to prevent the forfeiture. 1 *H. H.* 363, 4, 5, 6, 7.

II. Of loſs of dower.

Forfeiture of dower in felony.

Albeit a perſon ſhall be attainted of felony, yet his wife ſhall not forfeit her dower. 1 *Ed.* 6. *c.* 12. *ſ.* 17.

In treaſon.

But on his attainder of treaſon, ſhe ſhall forfeit her dower. 5 & 6 *Ed.* 6. *c.* 11. *ſ.* 13. But in ſome kinds of treaſon (particularly with regard to the coin) there is a ſpecial ſaving of the wife's dower by ſtatute.

III. Of corruption of blood.

Corruption of blood.

It is agreed, that by an attainder of treaſon or felony, the blood is ſo far ſtained or corrupted, that the party loſes all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* 456.

Alſo, that he can neither inherit as heir to an anceſtor, nor have an heir. *Id.*

But the king's pardon, tho' it doth not reſtore the blood, yet as to iſſues born after, hath the effect of a reſtitution. 1 *H. H.* 358.

But reſtitution of blood, in its true nature and extent, can only be by act of parliament. 1 *H. H.* 358. 2 *Haw.* 458.

Forgery.

Of forgery at common law.

FORGERY is an offence at common law, and an offence alſo by ſtatute.

Forgery at the common law, is an offence in falſly and fraudulently making or altering any manner of record, or any other authentic matter of a publick nature; as a pariſh regiſter, or any deed, will, privy ſeal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw.* 182. 184.

As for writings of an inferior nature, as private letters, and ſuch like, the counterfeiting of them is not properly forgery; therefore in ſome caſes it may be more ſafe to proſecute ſuch offenders for a miſdemeanor, as cheats. For by reaſon of the uncertainty of opinions concerning proper forgeries at common law, indictments are generally brought upon ſome of the following ſtatutes, and very few at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and impriſoned. *Wood. b.* 3. *c.* 3. 1 *Haw.* 184.

But as to the power of juſtices of the peace in this matter, Mr. *Hawkins* ſays, it hath been ſettled of late that they have no juriſdiction over forgery at the common law; the principal reaſon of which reſolution (he ſays) as he apprehended, was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was for the preſervation of the peace againſt perſonal wrongs and open violence, and the word *treſpaſs* in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the commiſſion, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40. 1 *Salk.* 406.

But Mr. *Barlow* ſays nevertheleſs, that it ſeemeth clear, that a juſtice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to priſon in order to abide his trial. *Barl.* 244.

Forgery by ſtatute.

The ſtatutes that make forgery an offence are theſe that follow:

The firſt is that famous ſtatute of the 5 *El. c.* 14. which, by an example worthy to be imitated, doth (in order to prevent

prevent confuſion) repeal all former ſtatutes againſt forgery. By this it is enacted, that *if any perſon upon his own head and imagination, or by falſe conſpiracy and fraud with others, ſhall wittingly, ſubtilly, and falſely forge or make, or ſubtilly cauſe, or wittingly aſſent to be forged or made, any falſe deed, charter, or writing ſealed, court roll, or the will of any perſon in writing, to the intent that the eſtate of freehold, or inheritance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame, may be moleſted, troubled, defeated, recovered, or charged; or ſhall pronounce, publiſh, or ſhew forth in evidence the ſame, as true, knowing the ſame to be falſe and forged, to the intent as above (except lawyers or attornies for their clients, not being privy to the forgery); and ſhall be thereof convicted, either upon action or the ſuit of the party, or otherwiſe according to the order and due courſe of the laws of the realm, ——— he ſhall pay to the party double coſts and damages, and be ſet upon the pillory in ſome open market town or other open place, and have both his ears cut off, and his nōſtrils ſlit and ſeared with a hot iron, and ſhall forfeit the profits of his lands during life, and be impriſoned alſo during life.* ſ. 2.

And all juſtices of oyer and terminer, and juſtices of aſſize, ſhall have power to inquire of, hear, and determine, all offences in this act. ſ. 10.

Upon his own head] When the proceedings were in Latin, *ſuper proprium ſuum caput* was allowed to be good upon an indictment on this ſtatute; the law having more regard that the ſtatute be ſtrictly purſued, than rendered into proper Latin. 1 *Haw.* 187.

Forge or make] Making a ſecond deed, and antedating it, with intent to make it take place of a former deed, is forgery within this ſtatute. 3 *Inſt.* 167.

Or ſubtilly cauſe, or willingly aſſent] To *cauſe*, is to procure or counſel one to forge; to *aſſent*, is to give his aſſent or agreement afterwards, to the procurement or counſel of another; to *conſent*, is to agree at the time of the procurement or counſel, and ſuch is in law a procurer. 3 *Inſt.* 169.

But L. *Hale* ſays, that an *aſſent* after the fact is committed makes not the party aſſenting guilty of principal in the forging; but it muſt be a precedent, or concomitant aſſent. 1 *H. H.* 684.

False deed, charter, or writing] It seems to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 *Haw.* 184.

Writing sealed] These are large words; and the making of a false customary of a manor in writing under seal, containing divers false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted by the lord of the manor, which was also false, was resolved to be within these words *a false writing sealed.* 3 Inst. 171.

Sealed] It is required that the deed, charter, or writing must be sealed, that is, have some impression upon the wax; for wax, without an impression, is not a seal. 3 *Inst.* 169.

Court roll, or will] Here are two writings which need not be sealed, because they may take effect without any seal, for that they be no deeds; and no writing can have the force of a deed without a seal. 3 *Inst.* 170.

Will] If any person which writeth the will of a sick man, inserteth a clause therein concerning the devise of lands, without any direction of the devisor, this is forgery, although he did not forge the whole will. 3 *Inst.* 170.

To the intent that the estate of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same, may be molested, troubled, defeated, recovered, or charged] *E.* 4 *G.* 2. *K.* and *Japhet Crooke.* The defendant was convicted on this statute for forging a lease and release. And the indictment sets forth, that *Garbut* and his wife were seised in fee of certain messuages, lands, and tenements called *Jawick* in the parish of *Clackton* in *Essex*, and that the defendant, intending to molest them and their interest in the premises, forged a lease and release as from *Garbut* and his wife, whereby they are supposed for a valuable consideration to convey to him, "all that park "called *Jawick* park in the parish of *Clackton* in *Essex*, "containing eight miles in circumference, with all the "deer,

"deer, woods, &c. thereto belonging." It was moved in arreſt of judgment, that the premiſes ſuppoſed to be conveyed were ſo materially different from thoſe which were really the eſtate of *Garbut* and his wife, which were houſes, lands, and tenements; that it was impoſſible this conveyance ever could moleſt or diſturb them: if it was a true deed, it could not paſs their lands at law, for want of a proper deſcription; and though where lands are improperly deſcribed, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a ſale, and they do it as carrying that contract into execution. The court for ſeveral terms inclined ſtrongly with the objection; but this term *Raymond* Ch. J. declared, that they were all of opinion to over-rule it: for by the words of the act, it is not neceſſary that there ſhould be a charge or a poſſibility of a charge: It is ſufficient that it be done with that intent, and the jury have found that it was done with intent to moleſt *Garbut* and his wife in the poſſeſſion of their lands. Accordingly judgment was given for the king, and the defendant had ſentence to undergo the puniſhment appointed by the act for forging a deed, and the ſame was executed upon him at *Charing croſs*. *Str.* 901.

Pronounce or publiſh] That is, when one by words or writing pronounceth or publiſheth the deed to any other as true. 3 *Inſt.* 171.

Knowing the ſame to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publiſh it afterwards as true, and it prove to be forged indeed, he is in danger of this ſtatute. 3 *Inſt.* 171. 1 *Haw.* 187.

But L. *Hale* ſays, that tho' ſuch a relation may be an evidence of fact to prove his knowledge, yet it is not concluſive; for perchance there might be circumſtances of fact, that might make the perſon relating it, or his relation, not credible: ſo that the *knowing* muſt be upon the whole matter left to the jury, upon the circumſtances of the caſe. 1 *H. H.* 685.

Juſtices of oyer and terminer] Albeit juſtices of the peace, by their commiſſion, have power to hear and determine felonies and treſpaſſes, yet they are not included under the name of juſtices of oyer and terminer; for juſtices of oyer

and terminer are known by one diſtinct name, and juſtices of the peace by another. 3 *Inſt.* 103.

And by the ſame ſtatute it is further enacted, that *if any perſon, upon his own head or imagination, or by falſe conſpiration or fraud with any other, ſhall wittingly, ſubtilly, and falſely forge or mark, or cauſe or aſſent to be made and forged, any falſe charter, deed, or writing to the intent that any perſon may have or claim any eſtate or intereſt for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee-ſimple, fee-tail, or for term of life, lives, or years, or any obligation, or bill obligatory, or any acquittance, releaſe, or other diſcharge of any debt, account, action, ſuit, demand, or other thing perſonal; or ſhall pronounce, publiſh, or give the ſame in evidence as true, knowing the ſame to be falſe and forged; he ſhall, on conviction in like manner, pay to the party double coſts and damages, and be ſet on the pillory, and have one of his ears cut off, and be impriſoned for a year.* ſ. 3.

Obligation, or bill obligatory] The forgery of a deed of gift of mere perſonal chattels is not within this ſtatute. 1 *Haw.* 186.

And *if after verdict, the plaintiff ſhall releaſe the judgment or execution, or ſuffer a diſcontinuance, it ſhall only diſcharge his own coſts and damages, and not the other puniſhment.* ſ. 6.

And by the ſame ſtatute it is further enacted, that *if any perſon ſhall after conviction offend again in any of the ways above mentioned, he ſhall be guilt of felony without benefit of clergy.* ſ. 7, 8.

Thus ſtood the matter upon the ſtatute of 5 *El.* Afterwards by many ſubſequent ſtatutes (ſeveral of which were occaſional only, and adapted to the particular juncture and circumſtances of the time in which they were made, but which are referred to and enforced by the ſubſequent ſtatutes, on the ſame ſubject) divers other forgeries were made felony without benefit of clergy for the firſt offence; and others had other puniſhments aſſigned them. Such are theſe that follow:

It ſhall be felony, without benefit of clergy, to forge or counterfeit,

(1) Any bank bills, or notes, or the ſeal of the governor and company of the bank of *England.* 7 & 8 *W.* *c.* 31. *ſ.* 36. 8 & 9 *W.* *c.* 20. *ſ.* 36. 11 *G.* *c.* 9. *ſ.* 6. 12 *G.* *c.* 32. *ſ.* 9.

And in general, any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the ſeal of the bank, or indorſement thereon; or knowingly offering to diſpoſe thereof. 15 *G.* 2. *c.* 13. *ſ.* 12.

(2) *India* bonds. 12 *G. c.* 32. *ſ.* 9.

(3) Bonds, receipts, warrants, or ſeal of the *South Sea* company. 9 *An. c.* 21. *ſ.* 57. 6 *G. c.* 4. *ſ.* 56. 6 *G. c.* 11. *ſ.* 50. 12 *G. c.* 32. *ſ.* 9.

(4) Exchequer bills; by the ſeveral acts which direct the iſſuing the ſame.

(5) Any power to transfer ſtocks. 8 *G. c.* 22. *ſ.* 1. or perſonating the owners thereof. 4 *G.* 3. *c.* 25.

(6) Lottery tickets and orders: by the ſeveral lottery acts.

(7) Policy of aſſurance. 6 *G. c.* 18. *ſ.* 13.

(8) Mediterranean paſſes. 4 *G.* 2. *c* 18.

(9) Army debentures. 5 *G. c.* 14. *ſ.* 10.

(10) Marriage licence or regiſtry of a marriage. 26 *G.* 2. *c.* 33.

(11) Stamps on vellum, parchment, and paper, by the ſeveral ſtamp acts.

(12) Stamps on linen imported. 10 *An. c.* 19. *ſ.* 97.

And beſides theſe (and other like) particular laws, in the 2 *G.* 2. a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that *if any perſon ſhall falſly make, forge, or counterfeit, or cauſe or procure the ſame to be done, or willingly aid or aſſiſt in the falſe making, forging, or counterfeiting any deed will, bond, writing obligatory, bill of exchange, promiſſory note, indorſement or aſſignment of any bi l of exchange or promiſſory note, acquittance or receipt for money or goods, with intent to defraud any perſon; or ſhall utter or publiſh the ſame as true, knowing the ſame to be forged;——— he ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood or diſheriſon of heirs.* 2 G. 2. c. 25. ſ. 1. 5.

And by the 7 *G.* 2. *c.* 22. and 18 *G.* 3. *c.* 18. It is further enacted, by way of addition to the foregoing, that *if any perſon ſh ll falſly make, alter, forge, or counterfeit, or willingly act or aſſiſt in the falſe making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal ſum of any accountable receipt for any note, bill or other ſecurity for payment of money, or any warrant or order for payment of money or delivery of goods, with intent to defraud any perſon or corporation; or ſhall utter or publiſh the ſame as true, with intent to defraud any perſon or corporation, knowing the ſame to be falſe;———he ſhall be guilty*

of felony without benefit of clergy: And this without any ſaving of the corruption of blood, or diſheriſon of heirs.

Warrant or order for payment of money or delivery of goods] In the caſe of *Mary Mitchell*, on this order.

" Mr. *Jeffreys*, *Oct.* 16, 1753.

" I deſire you to let this woman have ſix yards of ordi-
" nary ſtuff, one pair of ſtockings, one ſhift, one apron,
" one handkerchief, and I will ſee it all paid for. Wit-
" neſs my hand, *George May.*"

Upon a conference among the judges, nine of them were of opinion that this writting is not a warrant or order for the delivery of goods within the meaning of the act: That the words *warrant* or *order* do import, that the perſon giving ſuch warrant or order hath or at leaſt claimeth an intereſt in the money or goods which are the ſubject matter of that warrant or order; that he hath or at leaſt aſſumeth a diſpoſing power over ſuch money or goods; and taketh on him to transfer the property, or cuſtody of them at leaſt, to the perſon in whoſe favour ſuch warrant or order is made: And tho' the preſent caſe, and many others of the like kind, may come within the miſchiefs intended to be prevented by the act, yet in the conſtruction of acts ſo penal as this, the old rule of adhering ſtrictly to the letter muſt not be departed from. And the priſoner was diſcharged from the indictment which was brought againſt her for forging this order. *Foſt.* 119.

Fornication. See Lewdneſs.

Frame work knitters.

Pieces to be marked.

ALL frame work knitted pieces and ſtockings, made of thread, cotton, worſted, or yarn, or of any mixture therewith, or of any other materials (except ſuch as ſhall be made of ſilk only), which ſhall contain three or more threads, ſhall be marked with the ſame number of ilet-holes, and no more, as there are threads contained in each piece or pair; and ſuch ilet-holes ſhall be made diſtinctly in one direct line, or in the ſame courſe, and ſhall not exceed the diſtance of three inches from the two extreme

extreme ilet-holes: and no ſuch ilet-holes ſhall be made within the diſtance of 4 inches of any letter, figure, mark, or other device, which ſhall be put or woven in any ſuch goods or manufactures; and all ſuch ilet-holes ſhall be made within 4 inches of the top or end of every ſuch piece or pair; and no ilet-hole, or imitation thereof, ſhall be made in any frame work knitted piece or pair of ſtockings, upon any account whatſoever, except as herein-before directed. 6 G. 3. c. 29. ſ. 1.

Provided, that nothing herein ſhall extend to prevent any manufacturers from uſing remnants, or materials of any ſort, in the welt and tops of ſtockings only, at any diſtance not exceeding 3 inches from the top, altho' the ſame ſhall not contain ſo great a number of threads as are contained in the legs of ſuch ſtockings. ſ. 2.

Penalty on not marking.

And if any maſter frame work knitter, or maſter hoſier, or any other perſon, ſhall make or work, or cauſe or procure to be made or wrought, any frame work knitted goods, of any the materials aforeſaid or any mixture thereof (except ſuch as ſhall be made of ſilk only), without being ſo marked; he ſhall forfeit the ſame, and alſo 5l. for each piece or pair of ſtockings. ſ. 3.

Provided, that the ſaid penalty of 5l. ſhall not extend to any journeyman, apprentice, ſervant, or perſon not making ſuch goods on his own account: But ſuch perſon offending herein ſhall forfeit not exceeding 40 s. nor leſs than 5 s.; unleſs he can prove that the goods by him unduly marked were ſo marked by direction of his maſter or perſon by whom he was employed, in which caſe he ſhall not be ſubject to any penalty. ſ. 4, 5, 6.

Selling unmarked goods.

And if any frame work knitter, hoſier, or other perſon, ſhall ſell or expoſe to ſale, any of the ſaid goods, not ſo marked as aforeſaid: he ſhall forfeit the ſame, and alſo 5 l. for each piece or pair. ſ. 7.

Provided, that if the perſon ſelling or expoſing the ſame to ſale, ſhall diſcover the vender or ſeller thereof, ſo as he may be convicted; ſuch perſon ſhall be diſcharged. ſ. 8.

Penalties how to be recovered.

And one juſtice where the offence ſhall be committed (not being a frame work knitter, hoſier, or proprietor of frames) may convict the offender, on the oath of one witneſs: And if the penalties or forfeitures ſhall not be forthwith paid, the ſaid juſtice ſhall iſſue his warrant to levy the ſame by diſtreſs; and if no goods, or not ſufficient, can be found, ſuch juſtice ſhall, on oath made to him by the perſon who ſhall have the execution of the warrant,

warrant, commit the offender to the common goal of the place where the offence was committed, for any time not exceeding 3 months, unleſs the penalties and forfeitures ſhall be ſooner paid and ſatisfied. All which penalties and forfeitures ſhall be applied, half to the informer, and half to the poor. *ſ.* 9.

Appeal. Perſons aggrieved may appeal to the ſeſſions, giving ten days' notice to the juſtice, and within two days after notice entering into recognizance before a juſtice, with two ſureties, to try the appeal at ſuch ſeſſions: And the juſtices there, on due proof of ſuch notice and recognizance, ſhall hear and determine the ſame, and may award coſts to either party; and their determination ſhall be final, binding and concluſive, to all intents and purpoſes. *ſ.* 10.

Provided, that nothing herein ſhall extend to abridge or take away any rights or privileges, of the maſter, wardens, and aſſiſtants, of the company of frame work knitters. *ſ.* 12.

Fraud. See Cheat.

Friendly Societies.

Any number of perſons may form themſelves into a ſociety, and make rules, &c. BY 33 *G.* 3. *c.* 54. Any number of perſons may form themſelves and eſtabliſh one or more ſociety or ſocieties of good fellowſhip, for raiſing by ſubſcription of the members thereof, or by voluntary contribution, a fund for the mutual relief or maintenance of their members in old age, ſickneſs, and infirmity; or for the relief of the widows and children of deceaſed members; and ſuch members, or ſuch number of them as ſhall be appointed a committee for that purpoſe, may aſſemble together, and make ſuch rules, orders, and regulations for the government of the ſame, as to a majority of ſuch ſociety, or committee thereof ſo aſſembled, ſhall ſeem meet, ſo as the ſame be not contrary to law, nor to this act: And they may impoſe ſuch reaſonable fines and forfeitures upon the members who ſhall offend againſt ſuch rules, orders, and regulations, as ſhall be juſt and neceſſary for duly inforcing the ſame, to be paid for the uſe of ſuch ſociety, as they ſhall by ſuch rules, orders, or regulations direct; and they may alter and

and amend ſuch rules, orders, and regulations as occaſion ſhall require, or annul and repeal the ſame and make new ones in lieu thereof. *ſ.* 1.

Such rules, &c. to be exhibited to the ſeſſions, who may annul or confirm them.

Provided, that all ſuch rules, orders, and regulations with all convenient ſpeed after the ſame ſhall be made, altered, or amended; and alſo after every making, altering, or amending thereof; ſhall be exhibited in writing to the juſtices at the ſeſſions or adjournment thereof for the county or place where ſuch ſociety ſhall be eſtabliſhed, and ſuch rules, orders, and regulations, ſhall be ſubject to the review of ſuch juſtices, who may, after due examination at the then, or the next ſubſequent ſeſſions, annul and make void all ſuch rules, orders, or regulations as ſhall be repugnant to this act, and ſhall allow and confirm ſuch as ſhall be conformable thereto; and after having been ſo confirmed, ſhall be ſigned by the clerk of the peace at ſuch ſeſſions, and a duplicate thereof on parchment ſhall be depoſited with, and filed by the clerk of the peace at ſuch ſeſſions, without fee, and the ſame ſhall be binding upon all parties: And no ſuch ſociety which ſhall hereafter be eſtabliſhed, ſhall be deemed to be within the meaning of this act, until good rules, orders, and regulations for the government thereof ſhall be confirmed, and filed as aforeſaid: And no ſociety already eſtabliſhed, ſhall be deemed to be within the intent and meaning of this act, unleſs all the rules, orders, or regulations under which the ſame is thereafter to be governed, ſhall be exhibited, confirmed, and filed in manner aforeſaid, at ſome time before or at the *Michaelmas* ſeſſions, or ſome adjournment thereof in the year 1794. *ſ.* 2. [But by 35 *G.* 3. *c.* 111. *ſ.* 1. further time is given till *Michaelmas* ſeſſions 1796.]

No confirmed rules to be altered but at a general meeting; and to be ſubject to the review of the ſeſſions.

Provided, that no rule, order, or regulation, confirmed in manner aforeſaid ſhall be altered, reſcinded, or repealed, unleſs at a general meeting of the members of ſuch ſociety, convened by publick notice in writing, ſigned by the ſecretary or clerk, in purſuance of a requiſition by three or more members, and publickly read at the two uſual meetings of ſuch ſociety held next before ſuch general meeting for that purpoſe, unleſs a committee of ſuch members ſhall have been nominated for that purpoſe, in which caſe ſuch committee ſhall be convened in like manner; and unleſs ſuch alteration or repeal ſhall be made with the approbation of three-fourths of the members then preſent, or by the like proportion of ſuch committee as aforeſaid; and ſuch alteration or repeal ſhall be ſubject to the review of the juſtices at ſuch ſeſſions or adjournment

as

as aforeſaid; and ſhall not be binding until agreed to and confirmed by ſuch juſtices, and filed as aforeſaid. 33 *G.* 3. *c.* 54. *ſ.* 3.

Officers to be appointed;

And ſuch ſociety may at any general meeting, or by their committee if any ſuch there be, appoint ſuch perſons into the office of ſteward, preſident, warden, treaſurer, or truſtee of ſuch ſociety, and ſuch clerks and other officers as ſhall be deemed neceſſary for carrying into execution the purpoſes of ſuch inſtitution, and for ſuch purpoſes as ſhall be fixed and eſtabliſhed by the rules of ſuch ſociety; and appoint others in the room of thoſe who ſhall vacate or die; and every ſuch officer or other perſon who ſhall be appointed to the receipt, management, or expenditure of any money collected for the purpoſe of any ſuch ſociety, before he ſhall be admitted to take upon him the execution thereof, ſhall (if required by the rules of ſuch ſociety) become bound with two ſufficient ſureties, for the juſt and faithful execution of ſuch office, and for rendering a true account according to the rules, orders, and regulations of ſuch ſociety, and in all matters lawful to obey the ſame, in ſuch penal ſum as the major part of ſuch ſociety, at ſuch meeting as aforeſaid, ſhall think expedient and to the ſatisfaction of ſuch ſociety; and ſuch bond to be given by ſuch treaſurer or truſtee, ſhall be given to the clerk of the peace of the county, riding, diviſion, or ſhire where ſuch ſociety ſhall be eſtabliſhed, without fee; and, in caſe of forfeiture, it ſhall be lawful to ſue upon ſuch bond in the name of the clerk of the peace for the time being, for the uſe of ſuch ſociety; and every ſuch bond to be given by any other perſon appointed to any other office or truſt as aforeſaid, ſhall be given to the treaſurer or truſtee of ſuch ſociety for the time being, to be by him proſecuted for any forfeiture thereof for the uſe of ſuch ſociety; and no ſuch bond or other ſecurity given in purſuance of this act ſhall be chargeable with any ſtamp duty. *ſ.* 4.

and to give ſecurity if required.

Such ſecurities not ſubject to any ſtamp duty.

Committees may be appointed.

And every ſuch ſociety may elect any number of the members thereof, not leſs than eleven, to be a committee, and may delegate to ſuch committee all or any of the powers given by this act to be executed; who ſhall continue to act as ſuch committee for ſuch time as they ſhall be appointed; and in all caſes where a ſtanding committee ſhall be appointed for general purpoſes, their powers ſhall be firſt declared in their rules, orders, and regulations confirmed and filed at the ſeſſions as aforeſaid: and where a committee ſhall be appointed for any particular purpoſe, the powers delegated to them ſhall be entered in a book by

the

the ſecretary or clerk, and five of the members of ſuch committee at leaſt ſhall be neceſſary to concur in any act of ſuch committee; and they ſhall, in all things delegated to them, act for and in the name of ſuch ſociety, which acts ſhall have the like force as if done at any general meeting. Provided, that the tranſactions of every ſuch committee, ſhall be ſubject to the review, allowance, or diſallowance and controul of ſuch ſociety, in ſuch manner as by their rules, orders, and regulations confirmed and filed as aforeſaid is directed. *ſ.* 5.

Surplus money may be lent out at intereſt.

And ſuch treaſurer or truſtee may, with the conſent of ſuch ſociety, teſtified as directed by their rules and orders, lay out ſuch part of the money belonging to ſuch ſociety as the exigencies thereof ſhall not call for, either on private ſecurity, to be approved of as aforeſaid, (to be taken in the name of ſuch treaſurer or truſtee,) or may veſt the ſame in the publick funds in the name of ſuch treaſurer or truſtee; and with ſuch conſent as aforeſaid, may alter and transfer ſuch ſecurities and funds, and make ſale thereof reſpectively. And the dividends, intereſt, and proceeds thereof ſhall be brought to account by ſuch treaſurer or truſtee, and ſhall be applied to the uſe of ſuch ſociety. *ſ.* 7, 8.

Treaſurers, &c. to render accounts, and pay over balance, &c.

Provided, that the treaſurer or truſtee and all other officers of ſuch ſociety, who ſhall have or receive any money or effects of ſuch ſociety, or ſhall be entruſted with the diſpoſition, management, or cuſtody thereof, or of any ſecurity relating to the ſame, his executors, adminiſtrators, and aſſigns, ſhall upon demand, in purſuance of any order of ſuch ſociety, or committee, give in his account at a general meeting, or to ſuch committee as aforeſaid, to be examined, and allowed or diſallowed, and ſhall, on like demand, pay over the money remaining in his hand, and aſſign or deliver all ſecurities, effects, or funds, taken or ſtanding in his name as aforeſaid, or being in his cuſtody, to the treaſurer or truſtee, or ſuch other perſon as ſuch ſociety ſhall appoint; and in default thereof, ſuch ſociety, in the name of the treaſurer or truſtee, may exhibit a petition in *Chancery*, who may hear and determine the ſame, and aſſign counſel and appoint a clerk of ſuch court to carry on ſuch petition, who are to act without fee; and no fee ſhall be taken by any officer of ſuch court, and the proceedings therein ſhall not be chargeable with any ſtamp duty. *ſ.* 8, 9.

And on neglect application may be made to the court of chancery.

Money due to ſocieties to be paid before any other debts.

And if any perſon appointed to any office by any ſuch ſociety, and having in his hands any money or effects, or

ſecurities belonging to the ſame, ſhall die, or become a bankrupt, or inſolvent, his executors, adminiſtrators, or aſſigns ſhall, within 40 days after demand made by the order of any ſuch ſociety, or the major part of them aſſembled at any meeting, deliver all things belonging to ſuch ſociety to ſuch perſon as they ſhall appoint, and ſhall pay out of the aſſets or effects of ſuch perſon, all money remaining due which ſuch perſon received by virtue of his ſaid office before any of his other debts, and all ſuch aſſets and effects ſhall be bound to the payment thereof accordingly. *ſ.* 10.

Effects of ſocieties to be veſted in the treaſurer, &c.

And all the effects whatever belonging to ſuch ſociety, ſhall be veſted in the treaſurer or truſtee for the time being for the benefit of ſuch ſociety, and after their death or removal, ſhall veſt in the ſucceeding treaſurer or truſtee without any aſſignment or transfer whatever, who may bring and defend actions, ſue or be ſued; and the ſame ſhall not be diſcontinued by the death or removal of ſuch perſon. *ſ.* 11.

Societies to declare the purpoſe of their eſtabliſhment, &c.

And before any of the rules, orders, or regulations of any ſuch ſociety ſhall be confirmed by the juſtices in manner aforeſaid, it ſhall be declared by one or more of the general rules, orders, or regulations of ſuch ſociety, the intent and purpoſe for which it is intended to be eſtabliſhed, and ſhall alſo therein direct the uſes and purpoſes to which the money which ſhall be ſubſcribed, paid, or given for the benefit thereof, or ſhall ariſe therefrom, or belong thereto, ſhall be applied, and under what circumſtances any member or other perſon ſhall become entitled to the ſame or any part thereof, which application ſhall not be repugnant to the uſes, intents, and purpoſes of ſuch ſociety ſo declared as aforeſaid; and ſuch rules, orders, and regulations ſhall be complied with and inforced, and ſuch monies ſhall not be miſapplied, under ſuch penalties or forfeitures as by any general rule, order, or regulation ſhall be inflicted. *ſ.* 12.

May inflict penalties.

Not to be diſſolved without conſent.

Provided, that it ſhall not be lawful for any ſuch ſociety to diſſolve or determine the ſame ſo long as the intents and purpoſes declared by them remain to be carried into effect, without the conſent of five-ſixths of the then exiſting members, and alſo of all perſons then receiving or entitled to receive relief, teſtified under their hands; nor ſhall ſuch ſociety direct the diviſion or diſtribution of ſuch ſtock or fund, or any part thereof, among the members, other than for carrying into effect the general intents and purpoſes thereof, declared by them, and confirmed by the juſtices as aforeſaid:

aforeſaid: but all ſuch rules, orders, or regulations for the diſſolution of ſuch ſociety, without ſuch conſent, ſhall be void. *ſ.* 12.

And all ſuch rules, orders, and regulations ſhall be entered in a book to be kept by a member, and ſhall be ſigned by the members, and ſhall at all reaſonable times be open for their inſpection, and ſhall be deemed original orders, and ſhall be received in evidence in all courts; and no *certiorari* ſhall be allowed to remove any ſuch rules, orders, or regulations into the courts at *Weſtminſter*. *ſ.* 13.

Rules and orders to be entered in a book, and received in evidence, &c.

And any ſuch ſociety may receive donations towards the ſupply of their ſtock, which ſhall be applied in like manner as the contributions of the ſeveral members, and in no other manner. *ſ.* 14.

Societies may receive donations.

If any perſon, being a member of any ſuch ſociety, ſhall think himſelf aggrieved by any act, matter, or thing done or omitted by any ſuch ſociety, or perſon acting under them, two neighbouring juſtices, on complaint upon oath by or on behalf of ſuch perſon, may ſummon the preſident, wardens, ſtewards, or other principal officers of ſuch ſociety by whatever name they ſhall be called, or any one of them, if ſuch complaint be made againſt ſuch ſociety collectively; and in caſe ſuch complaint ſhall be made againſt any perſon appointed to any ſuch office as aforeſaid, then to ſummon ſuch perſon to appear before them, and alſo to ſummon to appear at the ſame time and place, if there be occaſion, all ſuch perſons as ſhall appear to have the cuſtody of the rules, orders, and regulations of ſuch ſociety; and ſuch juſtices at the time and place named in ſuch ſummons, whether the perſon ſummoned appear or not, on proof upon oath of ſuch ſummons having been duly ſerved, or left at his uſual place of abode, ſhall proceed peremptorily to hear and determine in a ſummary way the matter of ſuch complaint according to the true purport and meaning of the rules, orders, and regulations of ſuch ſociety, confirmed by the juſtices as aforeſaid, and ſhall make ſuch order therein as to them ſhall ſeem juſt, which ſhall be final to all intents and purpoſes, and ſhall not be ſubject to appeal, nor removeable into the courts at *Weſtminſter*. *ſ.* 15.

Members thinking themſelves aggrieved, may complain to two juſtices, who may hear and determine the ſame.

And where proviſion ſhall be made by the rules or orders of any ſuch ſociety, and confirmed as aforeſaid, for a reference by arbitration of any diſpute; the matter ſo in diſpute ſhall be referred to ſuch arbitrators as ſhall be named and elected in ſuch manner as preſcribed in ſuch rules and orders;

Where general rules direct diſputes to be ſettled by arbitration.

orders; and whatever award, order, or determination ſhall be made by ſuch arbitrators, or the major part of them, according to the true purport and meaning of the rules and orders of ſuch ſociety, ſhall be binding and concluſive without appeal, or being ſubject to the controul of two juſtices in the manner herein before deſcribed. *ſ.* 16.

No member producing a certificate thereof, removeable till actually chargeable.

And no member of any ſociety eſtabliſhed in purſuance of this act, who ſhall come to, or reſide in any pariſh or place not having a legal ſettlement there, and who ſhall deliver to any churchwarden or overſeer a certificate under the hands of the ſtewards, preſidents, wardens, or treaſurers of ſuch ſociety, or any two of them, atteſted by one witneſs, thereby acknowledging the perſon mentioned in ſuch certificate to be a member of ſuch ſociety, ſhall, during the time that he ſhall continue to be a member thereof, be removeable from any place where ſuch certificate hath been delivered as aforeſaid, to the place of his laſt legal ſettlement, until he ſhall become actually chargeable, or be forced to aſk relief for himſelf or his family, or ſome part thereof; and that then, and not before, ſuch perſon and his family, not having otherwiſe acquired a legal ſettlement there, may be removed to the place of his laſt ſettlement. *ſ.* 17.

How ſuch certificates are to be authenticated.

Provided always, that every ſuch certificate ſhall expreſs the place of abode of the perſons ſigning and atteſting the ſame, and one of the witneſſes ſhall make oath before a juſtice of the county, liberty, borough, town corporate, or place where ſuch ſociety ſhall be eſtabliſhed, that he did ſee the perſons whoſe names are thereunto ſet, ſeverally ſign the ſaid certificate, and that the names of ſuch witneſſes are of their own proper hand-writing; which ſaid juſtice ſhall alſo certify that ſuch oath was made before him; and every ſuch certificate ſo made, and oath of the execution thereof ſo certified by the ſaid juſtice, ſhall be taken, deemed, and allowed in all courts whatſoever as duly and fully proved, and be received as evidence without other proof thereof. *ſ.* 18.

Juſtices may ſummon perſons bringing certificates, to be examined as to their ſettlements.

Provided always, that upon complaint made by the churchwardens and overſeers where ſuch certificate ſhall be delivered to any juſtice or juſtices of the county, diviſion or ſhire, or city, borough, town corporate or place, where ſuch perſon ſhall reſide, or come to reſide under the authority of this act, ſuch juſtice or juſtices ſhall ſummon ſuch perſon before him or them, in the diviſion or place where ſuch perſon ſhall reſide or come to reſide, in order to be examined on oath touching the place of his laſt legal

ſettlement,

ſettlement, and ſuch perſon is required to obey ſuch ſummons, and make oath accordingly; and ſuch juſtice or juſtices is and are required to give an atteſted copy of ſuch examination ſo taken before him or them to the perſon making the ſame, to be by him, or any perſon on his behalf, at any time afterwards, produced before any ſuch juſtices as aforeſaid, before whom ſuch perſon ſhall be again ſummoned to make oath as aforeſaid; and that, in caſe any ſuch perſon ſhall be ſo again ſummoned, then on the production of ſuch atteſted copy, ſuch perſon ſhall not be compelled to take any other or further oath with regard to any of the matters contained in ſuch examination, but ſuch perſon ſhall, if required, permit a copy thereof to be taken for ſuch laſt mentioned juſtices. *ſ.* 19.

Copies of ſuch examinations to be given to the parties, which ſhall exempt them from further examination.

And any two juſtices who ſhall have taken ſuch examination as aforeſaid, or before whom ſuch atteſted copy of ſuch examination ſhall be produced at the requeſt of ſuch churchwardens and overſeers as aforeſaid, ſhall, by an order under their hands and ſeals, adjudge and declare the place of the laſt legal ſettlement of ſuch perſon having been ſo examined on oath as aforeſaid, or of ſuch of his family as ſhall reſide in ſuch pariſh or place under the authority of this act, without iſſuing any warrant to remove ſuch perſon or his family as aforeſaid, to ſuch place of their laſt legal ſettlement: and a duplicate of ſuch order ſhall be tranſmitted to the quarter ſeſſions to be holden next after 20 days from the time of making thereof, for the county, riding, diviſion, or ſhire where ſuch perſon ſhall ſo reſide, to be there filed; and a copy of every ſuch order, atteſted by one juſtice, or a duplicate thereof, together with an atteſted copy of ſuch examination to be annexed to ſuch copy of ſuch order or duplicate, ſhall be delivered to the churchwardens and overſeers of the pariſh or place in which the perſon mentioned in ſuch order ſhall be adjudged to be laſt legally ſettled as aforeſaid, or to any or either of them, at leaſt 15 days before the firſt day of holding ſuch ſeſſions; and upon proof on oath of one witneſs before the juſtices at ſuch ſeſſions; of the delivery of ſuch copy or duplicate with ſuch examination annexed as aforeſaid, ſuch juſtices ſhall direct the ſame to be filed at ſuch ſeſſions; and every ſuch order ſo filed, ſhall be final and concluſive in aſcertaining and determining the place of the laſt legal ſettlement of the perſons named in ſuch order, unleſs appealed againſt within the time hereinafter mentioned. *ſ.* 20.

Two juſtices may declare, by an order, the place of ſettlement of ſuch perſons, without removing them.

A duplicate of ſuch order to be tranſmitted to the ſeſſions;

and a copy of ſuch order and examination to be returned to the place of ſettlement.

Appeal.

Provided, that all perſons who ſhall think themſelves aggrieved by any ſuch adjudication of ſuch juſtices, may appeal to the next ſeſſions to be holden next after 15 days from the time of the delivery of ſuch copy or duplicate as aforeſaid; and ſuch ſeſſions ſhall receive ſuch appeal, and hear and determine the merits thereof, in like manner, and with the ſame effect, and under the like rules, as if the perſons mentioned in ſuch orders had been by warrant of two juſtices actually removed, and may award like coſts, to be recovered in like manner as is directed by any ſtatute now in being. *ſ.* 21.

Perſons reſiding under this act ſhall gain no ſettlement by notice;

But no member of any ſuch ſociety, who ſhall reſide in any pariſh or place under and by virtue of this act, ſhall acquire any ſettlement therein, by delivery and publication of any notice in writing, unleſs made after he ſhall ceaſe to be a member thereof, and after the revocation of his certificate herein-before mentioned.—Nor by being rated to and paying any tax or rate.—Nor ſhall any apprentice, or hired ſervant, to any ſuch member of any ſuch ſociety, who came into, or ſhall reſide in any pariſh or place under the authority of this act, and not afterwards having gained a ſettlement therein, be adjudged to gain any ſettlement by reaſon of ſuch apprenticeſhip or ſervice. *ſ.* 22, 23, 24.

nor by paying taxes;

nor by being an apprentice, or ſervant to any ſuch perſons.

Baſtards to have the mother's ſettlement.

And every child which ſhall be born a baſtard in any pariſh or place during the mother's reſidence therein under the authority of this act, ſhall have the ſame ſettlement which the mother had at the time of the birth of ſuch child, any law, uſage, or cuſtom to the contrary notwithſtanding. *ſ.* 25.

Charges of maintenance and removal to be reimburſed,

And when any overſeers ſhall have been put to any charge in maintaining any perſon or his family reſiding in any pariſh or place under the authority of this act, or in removing any perſon back to the place where he ſhall belong after he ſhall become chargeable, or aſk relief as aforeſaid, ſuch overſeer ſhall be reimburſed reaſonable charges, by the overſeers of the pariſh or place to which ſuch perſon ſhall belong, ſuch charges having been firſt aſcertained and allowed by one juſtice reſiding near where ſuch charges ſhall be incurred; and if not paid, may be levied by diſtreſs and ſale of the goods and chattels of ſuch overſeers as laſt aforeſaid, by warrant of one juſtice, returning the overplus, if any there be. *ſ.* 26.

Governors of inſtitutions for relief of widows, &c. may frame

And, by 35 *G.* 3. *c.* 111. after reciting, that ſeveral benevolent and charitable inſtitutions and ſocieties formed for relieving, by voluntary ſubſcriptions and benefactions,

tions, widows, orphans, and families of the clergy, and others in diſtreſſed circumſtances, may have funds which they may wiſh to place out on public ſecurities, under the management of a treaſurer, and under the authority of parliament: It is enacted, that the governors, directors, managers, or members of any ſuch inſtitutions, may frame good and wholeſome rules for the management and diſtribution of their funds, and amend and alter the ſame, or make new ones as occaſion may require, which ſhall be preſented to the juſtices for confirmation within the time herein before limited, and regiſtered under and ſubject to the ſame conditions, methods, reſtrictions, and regulations, as the members of the aforeſaid ſocieties. *ſ.* 2.

rules, which are to be preſented for confirmation as by the aforeſaid act.

And the governors, directors, managers, or members of every ſuch inſtitution, whoſe rules ſhall be confirmed and regiſtered as aforeſaid, may appoint a treaſurer, who ſhall give ſecurity as aforeſaid, and ſhall be ſubject to account for the funds belonging to ſuch inſtitution, and the ſame ſhall be veſted in ſuch treaſurer, who may ſue and be ſued in manner aforeſaid; and all things in the aforeſaid act contained, ſo far as the ſame relate to ſuch treaſurers and the funds veſted in them, ſhall extend to the inſtitutions eſtabliſhed by virtue of this act, as fully and effectually as any ſociety eſtabliſhed by virtue of the aforeſaid act. And all the powers, authorities, rules, methods, directions, regulations, proviſions, conditions, and reſtrictions, in the ſaid act contained, relating to the matters before mentioned, ſhall be applied to the ſeveral inſtitutions eſtabliſhed by virtue of this act, as fully as if the ſame had been repeated and re-enacted herein. *ſ.* 3.

Inſtitutions whoſe rules ſhall be confirmed, may appoint treaſurers, &c.

Fruit and Fruit Trees. See Wood.

Fuel.

BY the 43 *El. c.* 14. All faggots to be ſold ſhall contain in compaſs, beſides the knot of the bond, 24 inches of aſſize; and every faggot ſtick within the bond, ſhall contain full three foot of aſſize, except only one ſtick to be but one foot long, to ſtop or harden the binding.

By the 9 *An. c.* 15. *ſ.* 1. All billets (except thoſe made of beach, 10 *An. c.* 6.) that lie expoſed in public places where they are uſually bought or ſold, ſhall be aſſized, and cut or marked in manner following; that is to ſay,

All billets of what ſcantling or denomination ſoever, ſhall contain in length three foot and four inches, and be of the following dimenſions, viz.

Names of the billets.	Round.		Half round.		Quarter cleft.		
	in.	qr.	in.	qr.	in.	qr.	
A ſingle	72	0	0	0	0	0	No notch.
A caſt	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle.
2 caſt	15	0	17	1	17	0	Two notches.
3 caſt	18	1	21	1	21	0	One at each end, and one in the midddle.
4 caſt	21	1	24	2	24	0	4 notches.
5 caſt	23	3	27	2	27	0	5 notches.
6 caſt	26	0	30	0	29	2	6 notches.
7 caſt	28	0	32	2	32	0	7 notches.
8 caſt	30	0	34	3	34	0	8 notches.
9 caſt	31	3	36	3	36	1	9 notches.
10 caſt	33	2	38	3	38	0	10 notches.
11 caſt	35	1	——		——		11 notches.
12 caſt	36	3	——		——		12 notches.
13 caſt	38	1	——		——		13 notches.
14 caſt	39	3	——		——		14 notches.
15 caſt	41	0	——		——		15 notches.
16 caſt	42	2	——		——		16 notches.
17 caſt	43	3	——		——		17 notches.
18 caſt	45	0	——		——		18 notches.
19 caſt	46	1	——		——		19 notches.
20 caſt	47	2	——		——		20 notches.

And if they ſhall not be thus aſſized and marked, then on information to a juſtice of the peace, mayor, or other head officer, he ſhall call before him ſix good and lawful men of the town, and ſhall ſwear them truly to inquire and preſent, whether the ſame be of good and ſufficient aſſize; and if they ſhall preſent that any of them is not ſufficient, the ſame ſo being deficient ſhall be forfeited, and be delivered to the overſeers, to be by them diſtributed to the poor. *Id. ſ.* 2.

And by the 43 *El. c.* 14. The billets ſhall be meaſured within ſix inches of the midſt; and the ſurpluſage which ſhall

ſhall happen between any two next meaſures, being above the one, and under the other, ſhall be taken for the benefit of the buyer.

Fuller's Earth. See Woollen Manufacture.
Furze: Burning it in foreſts. See Burning.

Game.

THE ſtatutes relating to this title are very numerous, and the ſenſe ſometimes a little perplexed, ſo that perhaps upon a view of the whole, it may ſeem, that about four or five new acts, comprehending the ſeveral heads here undermentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and uſeful.

Penalties how to be recovered in general.

After having firſt premiſed (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the ſtatute of 8 *G.* *c.* 19. that where any perſon for any offence againſt *any law in being at the making of the ſaid act*, for the better preſervation of the game, ſhall be liable to pay any pecuniary penalty or ſum of money, on conviction before a juſtice of the peace, the proſecutor may either proceed to recover the ſame in ſuch manner, or he may ſue for the ſame (before the end of the ſecond term after the offence committed, 26 *G.* 2. *c.* 2.) by action of debt, or on the caſe, bill, plaint, or information, in any court of record at *Weſtminſter*, wherein if he recovers he ſhall have double coſts: Provided, that the offender ſhall not be proſecuted both ways; and in caſe of a ſecond proſecution, he may plead in his defence the former proſecution pending or the conviction or judgment thereupon had. And by the 2 *G.* 3. *c.* 19. whereas a moiety of the ſaid penalty by ſeveral acts is directed to be applied to the uſe of the poor of the pariſh where the offence was committed, by reaſon whereof inhabitants of the ſaid pariſh have been diſallowed to give evidence; it is enacted, that it ſhall be lawful for any perſon to ſue for the whole of ſuch penalty to his own uſe, and if he recovers he ſhall have double coſts; ſuch action to be brought within ſix months after the offence commited. But by 27 *G.* 3. *c.* 29. Where any pecuniary penalty or part thereof is given to the poor, the inhabitants of every ſuch

Inhabitants may be witneſſes.

pariſh or place ſhall be deemed competent witneſſes to prove any offences committed therein, notwithſtanding the penalty incurred, or any part thereof be given or applicable to the poor of ſuch place, or for the benefit or uſe thereof; unleſs ſuch penalty exceed 20 l. (This being premiſed) I will treat of this ſubject under the following heads:

I. Diſtinct property in game.
II. General obſervations concerning foreſts, chaces, parks, and warrens, and of treſpaſs in purſuing game.
III. Qualification by eſtate or degree to kill game, with the puniſhment of perſons unqualified killing or having game in their poſſeſſion.
IV. Certificate to be taken out.
V. Concerning gamekeepers.
VI. Laws for preſerving the four-footed game in particular.
VII. Laws for preſerving the winged game in particular.

I. Diſtinct property in game.

Before we take notice of the ſtatutes made for the preſervation of the game, it may be requiſite to obſerve how the common law ſtood herein: which depends upon the difference made between *tame* and *wild* animals.

Tame animals.

The tame animals, ſuch as *horſes*, *cows*, *ſheep*, and the like, are ſuch creatures, as by reaſon of their ſluggiſhneſs and unaptneſs for motion, do not fly the dominion of mankind, but generally keep within the ſame paſtures and limits, and may be eaſily purſued and overtaken, if by accident they ſhould eſcape; and therefore the owner hath the ſame kind of property in them as he hath in all inanimate chattels, and for the violation thereof may bring an action of treſpaſs.

Wild animals.

The wild animals, ſuch as *deer*, *hares*, *foxes*, and ſuch like, are thoſe, which by reaſon of their ſwiftneſs or fierceneſs fly the dominion of man; and in theſe, no perſon can have a property, unleſs they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own uſe, and the ability that he hath to apply it to the ſuſtenation of his being; when

that

that power ceaſeth, his property is loſt; and by conſequence an animal of this kind, which after any ſeizure eſcapes into the wild common of nature, and aſſerts its own liberty by its ſwiftneſs, is no more mine than any creature in the *Indies*, becauſe I have it no longer in my power or diſpoſal.

Hence it appears, that by the common law, every man had an equal right to ſuch creatures as were not naturally under the power of man; and that the mere caption or ſeizure created a property in them.

By immediate taking and killing them, they belong to ſuch perſon in the ſame manner as any other chattels, and cannot be taken from him; ſince the firſt ſeizure and caption was ſufficient to veſt the property of them in him.

Alſo by taking and taming them, they belong to the owner, as do the other tame animals, ſo long as they continue in this condition, that is, as long as they can be conſidered to have the mind of returning to their maſters; for while they appear to be in this ſtate, they are plainly the owner's, and ought not to be violated; but when they forſake the houſes and habitations of men, and betake themſelves to the woods, they are then the property of any man.

Another way of gaining property in them is, by incloſure; and then the beaſts muſt be underſtood to be mine, as the profits of the ſoil itſelf are; and they can no more be taken and carried off, than any other profits of the land: and therefore if deer be incloſed in a park or paddock, or conies in a field or warren, they become ſo much a man's own, that no one ought to kill or take them away. And ſince in this caſe it is the incloſure that retains them, (for take away the incloſure, and they are in their natural liberty); therefore the party is ſaid to have right as he hath to any other profits there incloſed, and a diſtinct and independent right in every animal.

It is a maxim of the common law, that ſuch goods, of which no one can claim any property, do belong to the king by his prerogative; and hence all thoſe animals *feræ naturæ*, which come under the denomination of *game*, are ſtyled in our laws his *majeſty*'s game: and that which he hath, he may grant to another; and conſequently another may preſcribe to have the ſame, within ſuch a precinct or lordſhip. And from hence cometh the right of lords of manors, or others, unto the game within their reſpective liberties.

And upon this foundation the ſeveral acts of parliament are eſtabliſhed, for the preſervation of theſe ſpecies of animals: for the recreation and amuſement of perſons of fortune, unto whom the king, with the advice and aſſent of parliament, hath granted the ſame; and to prevent perſons of inferior rank from ſquandering that time which their ſtation in life requireth to be more profitably employed. For theſe reſtrictions do not take from the common people any right which they ever had; but only grant unto ſome perſons thoſe privileges which before reſted ſolely in the king. 2 *Bac. Abr.* 612, 613.

II. General obſervations concerning foreſts, chaſes, parks, and warrens, and treſpaſs in purſuing game.

Foreſt, what. A *foreſt* is a certain territory of woody grounds and fruitful paſtures, privileged for wild beaſts and fowls of foreſt, chaſe, and warren, to reſt and abide there in the ſafe protection of the king, for his delight and pleaſure: which territory of ground ſo privileged is meered and bounded with unremoveable marks, meers, and boundaries, either known by matter of record, or by preſcription; and alſo repleniſhed with wild beaſts of venery or chaſe, and with great coverts of vert for the ſuccour of the ſaid beaſts there to abide: for the preſervation and continuance of which, there are particular officers, laws, and privileges, belonging to the ſame, requiſite for that purpoſe, and proper only to a foreſt, and to no other place. *Manw.* 40.

Note; That *vert* comprehends every thing which bears green leaves in the foreſt. *Manw.* 51.

And the lord having the wood in the tenant's land, which is ſtill cuſtomary in many manors, was originally for preſervation of the vert, for the ſuſtentation of the lord's game there.

Beaſts of foreſt. Beaſts of foreſt are properly hart, hind, buck, hare, boar and wolf; but legally all wild beaſts of venery. 1 *Inſt.* 233.

Purlieu, what. *Purlieu* comes from the French, *pur*, clear, entire, and exempt; and *lieu* a place: that is, a place, entire, clear, or exempt from the foreſt: and ſignifies thoſe grounds which *Henry* the ſecond, *Richard* the firſt, or king *John* added to their ancient foreſts, over other men's grounds; and were diſafforeſted by the ſtatute of *charta de foreſta*. 4 *Inſt.* 303. *Manw.* 318.

But

But nevertheleſs the *purlieu* as to ſome purpoſes is foreſt ſtill and is diſafforeſted as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beaſts and ſpoil the vert. And if thoſe beaſts do eſcape out of the foreſt into the *purlieu*, the king hath a property in them ſtill againſt any man but againſt the owners of the woods and lands in which they are; and ſuch owners have a ſpecial property in them *ratione loci*, but yet ſo that they hunt them fairly and not foreſtall them in their return towards the foreſt. *Manw.* 366.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beaſt of the foreſt in his woods or lands in the *purlieu*, in ſuch caſe he hath a property in them againſt any other man *ratione ſoli* (the king only excepted). And if he begins the hunting in his own lands, then by reaſon of that property he may purſue his hunting through any man's woods or lands, ſo as he doth not enter into any foreſt, chaſe, park, or warren. And if he kill the beaſt in another man's land, and out of ſuch privileged place, he may take and carry away the ſame by reaſon of the firſt property. But if the beaſt recover the foreſt, he muſt call back his dogs, for they are then the king's wild beaſts again. And if he do not call back and rebuke his dogs, and they kill the beaſt in the foreſt, he is a treſpaſſer, though himſelf never came within the bounds thereof. But if in hunting towards the foreſt, the dogs faſten on it before it is within the bounds thereof, and the dogs ſtill hanging on are drawn by the deer into the foreſt, and it is killed there, then by reaſon of the firſt property which he had *ratione ſoli*, and alſo by the purſuit and poſſeſſion thereof before it entered the foreſt, he may lawfully enter and take it. *Manw.* 373.

A *chaſe* (from *chaſſer*, to chaſe) is a privileged place for receipt of deer and beaſts of the foreſt, and is of a middle nature betwixt a foreſt and park. It is commonly leſs than a foreſt, and not endowed with ſo many liberties; as officers, laws, courts; and yet is of a larger compaſs than a park, having more officers and game than a park. Every foreſt is a chaſe, but every chaſe is not a foreſt. It differeth from a park in that it is not incloſed; for if it is incloſed, it is a good cauſe of forfeiture; though it muſt have certain metes and bounds, but it may be in other men's grounds as well as in one's own. *Read.* Game. *Manw.* 49. Chaſe, what.

Beaſts

Beasts of chase. Beasts of chase are, the buck, doe, fox, martern, and roe. *Manw.* 44.

Park, what. A *park* (from the French, *parquer*, to incloſe) is a large parcel of ground privileged for wild beaſts of chaſe by the king's grant, or by preſcription. *Read.* Game.

Beasts of park. The beaſts of park properly extend to the buck, doe, fox; but in a common and legal ſenſe to all the beaſts of the foreſt. *Id.*

Park to be incloſed. A park muſt be incloſed; for if it lies open, it is a good cauſe of ſeizure into the king's hands, as a thing forfeited: and the owner cannot have an action againſt thoſe that hunt in his park, if it lies open. *Id.*

Deer ſhall go to the heir. Deer in a park ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Warren, what. A *warren* is a place privileged by preſcription or grant of the king, for the preſervation of the beaſts and fowl of the warren; *viz.* hares, conies, partridges, and pheaſants. *Manw.* 44.

Need not be incloſed. A free warren may lie open, there being no neceſſity of incloſing it. *Read.* Game.

Conies ſhall go to the heir. Conies in a warren (as hath been ſaid before of deer in the park) ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Licence to erect. It is not lawful for any perſon to make any chaſe, park, or warren, in his own freehold or elſewhere, to keep in it any wild beaſts, or birds of foreſt, chaſe, park, or warren, without the king's grant or warrant ſo to do; and if any man do, he is to be puniſhed in a *quo warranto*, and the franchiſe to be ſeized into the king's hands. *Manw.* 56.

M. 12 *G. K.* and *Sir William Lowther.* It was moved for leave to file an information in nature of a *quo warranto* againſt *Sir William Lowther*, to ſhew by what authority he had made and ſet up a warren. But it was denied by the court: becauſe it was of a private nature, and therefore proper to be proſecuted only in the name of the attorney general by information, if his majeſty thought fit. And the like motion had been denied before in the caſe of the lord *Liſburne.* L. Raym. 1409. Stra. 637.

Hunting in a free warren. *E.* 17 *G.* 3. Lord *Dacre* and *Tebb.* Declaration in treſpaſs, for breaking and entring his free warren in *Aveley* in the county of *Eſſex*, and chaſing, hunting, and killing divers foxes, hares, conies, partridges, and pheaſants of the plaintiff, and taking away other his goods and chattels. On Not Guilty pleaded, and tried by a ſpecial

ſpecial jury, the defendant was found guilty of breaking and entring the free warren of the plaintiff and chaſing and hunting one hare, damages 6d. and not guilty as to the reſidue. It was moved for the plaintiff that he ſhould have full coſts; alledging, that the ſtatute 22 & 23 *C.* 2. (which reſtricts coſts in treſpaſs, where the damages are under 40s. unleſs the freehold or title to the land came in queſtion) did not extend to this action: in which there could not poſſibly be any queſtion relating to the land, but merely to the franchiſe of free warren: For that act related only to ſuch action of treſpaſs, where ſome injury was done to the land. For the defendant it was anſwered, that it was poſſible the freehold or title to the land might be ſo interwoven with the title to the free warren, that both might come in queſtion. And where the title to the land may come in queſtion, but did not, and the damages are under 40s. there ſhall be no more coſts than damages.——By the court: The act is confined to ſuch actions of treſpaſs, where the ſoil or land is mentioned in the declaration as the ſubject of the treſpaſs complained of. The right of free warren was not in the contemplation of the legiſlature. In an action merely for breaking free warren, it is impoſſible the title of the ſoil can ever come in queſtion. For tho' both may concur in one perſon, yet the title to the free warren is always collateral to that of the land, for a man may have free warren in another man's land. Beſides, the hare ſo hunted was the perſonal property of the owner of the free warren; and if any injury be done to perſonal property that will take it out of the ſtatute, and intitle the plaintiff to full coſts. And the rule was made abſolute for taxing full coſts. *Black. Rep.* 1151.

Which of theſe is the higheſt franchiſe.

A foreſt is the higheſt franchiſe of princely pleaſure; the next to that is a free chaſe; a chaſe in one degree is the ſame as a park, only a park is incloſed, and a chaſe is always open; the next in degree to a free chaſe is a park; and next unto a park, is the franchiſe of a free warren. And a foreſt comprehends in it a chaſe, park, and warren. And for that cauſe, the beaſts of chaſe, and the beaſts and fowls of warren, are privileged within a foreſt as well as the beaſts of the foreſt are. *Manw.* 52.

Common in a chaſe.

A perſon may have common in a chaſe, as well as in a foreſt; but a foreſt is governed by the foreſt law, and a chaſe and park by the common law. 4 *Inſt.* 314. *Manw.* 52.

No

Treſpaſs in going upon another's ground.

No man can come upon another man's ground to kill game, without being liable to an action of treſpaſs. 2 *Bac. Abr.* 613.

If I find a pheaſant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reaſon of the firſt property which I had in the pheaſant *ratione ſoli*; and if my hawk kill the pheaſant in another man's land, I may enter and take it, by reaſon of that property and purſuit; and in that caſe, I ſhall not be puniſhed as a treſpaſſer for taking and carrying away the pheaſant, but only for entering the ground. But if the pheaſant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer ſhall not have the pheaſant, but the owner of the warren. And the law is the ſame in the caſes of all wild beaſts of the foreſt and chaſe. *Manw.* 389.

But if he is qualified to kill game, and the damage found ſhall be under 40s. he ſhall in ſuch caſe pay no more coſts than damages. *Id.*

But in the caſe of *Reynold* and *Edwards*, *M.* 35 *G.* 3. which was upon an action of treſpaſs tried before *Buller* J. at *Staffordſhire* aſſizes, where it appeared in evidence, that a treſpaſs was committed by the defendant in courſing over a cloſe belonging to the plaintiff, who 4 years before had given a general notice to all perſons not to treſpaſs on his lands. It appeared alſo, that the defendant was anxious to avoid treſpaſſing on the plaintiff's grounds, and had made enquiries reſpecting his boundaries. The plaintiff's counſel preſſed the judge to certify that the treſpaſs was wilful and malicious, in order to entitle the plaintiff to full coſts under 8 & 9 *W. c.* 11. *ſ.* 4. (*a*) and the judge conceiving that he had no diſcretion on the ſubject, accordingly certified, reſerving liberty to the defendant to move to ſet aſide that certificate, if this court ſhould be of opinion that the ſtatute was not compulſory on the judge.—*Plumer* made a motion to that effect, and argued that the ſtatute did not extend indiſcriminately to all caſes of treſpaſs after notice, but was only intended to apply to *wilful and malicious treſ-*

(*a*) The 8 & 9 *W. c.* 11. *ſ.* 4. ſets forth, that in all actions of treſpaſs where at the trial it ſhall appear and be certified by the judge under his hand, upon the back of the record, that the treſpaſs was wilful and malicious, the plaintiff ſhall recover not only his damages, but his full coſts of ſuit.

paſſes; and that the defendant, ſo far from intentionally committing a wilful and malicious treſpaſs, endeavoured to avoid it. But the *court* refuſed to grant the rule, ſaying, that in the caſe of *Swinnerton* v. *Jarvis*, *E.* 22 *G.* 3. in the common pleas, it was determined, that if it appeared that the treſpaſs, however trifling, was committed after notice, the judge was bound to certify under the ſtatute; and that it was proper to adhere to that as an univerſal rule. *Durnf.* and *Eaſt*, 6 *V.* 11.

No treſpaſs in following beaſts of prey.

Notwithſtanding the common law allows of the hunting of foxes and badgers, being beaſts of prey, in another man's ground, becauſe the deſtroying of them is looked upon as a public benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of treſpaſs in that caſe. *Cro. Jac.* 321.

T. 26 *G.* 3. *Gundry* v. *Feltham*. This was an action of treſpaſs for breaking the hedges and trampling the graſs of the plaintiff, with horſes, dogs, &c. belonging to *Humphrey Sturt*, eſq. a qualified perſon, and to whom the defendant was huntſman, in purſuing a fox.——*Lawrence* for the plaintiff obſerved the queſtion was, whether a perſon hunting has a right to follow foxes upon the ground of another? The qualification of the perſon is entirely out of the queſtion. By the general law no perſon can go over the ground of another without his permiſſion; and in *Sutton* v. *Moody*, *L. Raym.* 250. *Holt* ſaid, "If *A.* "ſtarts a hare in the ground of *B.* and hunts it into the "ground of *C.* and kills it there, the property is "in *A.* the hunter; but *A.* is liable to an action of "treſpaſs for hunting in the grounds as well of *B.* as of "*C.*" In *Gedge* v. *Minne*, 2 *Bulſtr.* 60. it was determined that the defendant could not juſtify digging for a *badger*.——*Gibbs* for the defendant was ſtopped by the court. L. *Mansfield* ſaid, that, by all the caſes as far back as *H.* 8. it is ſettled that a man may follow a fox into the grounds of another.——*Wilſes* J. ſaid, that the caſe in *Popham*, 162. was much ſtronger than the preſent.——*Buller*, J. ſaid, the queſtion in this caſe was, whether the defendant is juſtified in following the fox over another man's ground? it is averred in the plea, that this was the only means of killing the fox. This caſe does not determine that a perſon may unneceſſarily trample down another man's hedges, or maliciouſly ride over his grounds; if he does more than is abſolutely neceſſary, he cannot juſtify it.——Judgment for the defendant. *Caſ.* by *Durnf.* and *Eaſt*, 1 *V.* 334.

If

Game eſcaped out of the incloſure, may be retaken on freſh purſuit.

If conies are hunted out of the warren, or deer out of the park, and the warrener or parker purſue them, he may retake them; for the park or warren is an eſtabliſhment by the public, to look after and preſerve the game; for all things unoccupied, in which no man hath a civil right, are under the regulation of the public: now in parks and warrens, officers are eſtabliſhed by authority, to have an eye over the game, and to keep it within the boundaries; ſo that the property is not altered by driving it out of the incloſures, unleſs it be alſo out of the purſuit of the officers; for as long as he that is thus truſted doth purſue it, it is not in its natural liberty, but is ſtill belonging to the park or warren. 2 *Bac. Abr.* 613.

Property in game killed.

If a man ſtarts any game within *his own* grounds, and follows it into another's, and kills it there, the property remains in himſelf, and this is grounded on reaſon and natural juſtice; for the property conſiſts in the poſſeſſion, which poſſeſſion commences by the finding it in his own liberty, and is continued by the immediate purſuit. 11 *Mod.* 75. 2 *Black. Com.* 419.

And ſo if a ſtranger ſtarts game in one man's chaſe or free warren, and hunts it into another liberty, the property continues in the owner of the chaſe or warren; this property ariſing from privilege, and not being changed by the act of a mere ſtranger. L. *Raym.* 251. 2 *Black. Com.* 419.

If a man ſtarts game on *another*'s private grounds, and kills it there, the property belongs to him in whoſe ground it was killed, becauſe it was alſo ſtarted there, this property ariſing *ratione ſoli.* Id.

But if after being ſtarted there, it is killed in the ground of a *third* perſon, the property belongs not to the owner of the firſt ground, becauſe the property is local; nor yet to the owner of the ſecond, becauſe it was not ſtarted in his ſoil; but it veſts in the perſon who ſtarted and killed it, though guilty of a treſpaſs againſt both the owners. *Id.*

III. Qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified, killing or having game in their poſſeſſion.

The qualification by eſtate for killing game, in the reign of K. *Richard* the ſecond, was 40s. a-year; in the reign of K. *James* the firſt it was advanced to 10l. a-year, and after that in ſome inſtances to 40l. a-year; and at laſt, in the reign of K. *Charles* the ſecond, it was raiſed to 100l. a-year. Not that the laws have become gradually more ſevere;

ſevere; but as the value of money decreaſed, the qualification was raiſed in proportion, the eſtate continuing nearly the ſame; for an eſtate of 40s. a-year in the reign of K. *Richard* the ſecond was not much inferior to an eſtate of 100l. a-year in the reign of K. *Charles* the ſecond. And the penalty for deſtroying the game was even more ſevere then than it is now; as I ſhall ſhew. For as thoſe ancient laws relating to the game are ſtill in force, and are generally enacted ſo to be by the ſubſequent ſtatutes, it will be neceſſary in order to have a thorough knowledge of this matter to inſert them in their order; becauſe the penalties on each being different, the proſecutor or juſtices may chuſe which of them they will convict an offender upon. Thus by the ſtatute of the 5 *An.* hereafter following, if a perſon not having 100 l. a-year ſhall keep dogs or engines to deſtroy the game he ſhall forfeit 5 l.; but if ſuch perſon have not 40 s. a-year he may upon the ſtatute of *R.* 2. be puniſhed by a year's impriſonment; and ſo of the reſt: Provided that no perſon be proſecuted upon more than one act for one offence.

40 s. a-year.

The firſt qualification relating to the game was in the 13th year of the reign of *R.* 2. by which it is enacted, that no layman which hath not lands or tenements of 40s. a-year, nor clergyman if he be not advanced to 10 l. a-year, ſhall have or keep any greyhound, hound, nor other dog, to hunt; nor ſhall uſe ferrets, hays, nets, hare-pipes, nor cords, nor other engines for to take or deſtroy hares, nor conies, nor other gentlemen's game: on pain of a year's impriſonment. And the juſtices of the peace (that is, in their ſeſſions) ſhall inquire of the offenders in this behalf, and puniſh them by the pain aforeſaid. 13 *R.* 2. *ſt.* 1. *c.* 13. 16 *G.* 3. *c.* 30.

10 l. a-year.

The next qualification by eſtate or degree to kill game, was by a ſtatue in the 1 *J.* whereby it is enacted that every perſon who ſhall keep any greyhound for courſing of deer or hare, or ſetting dog or net to take pheaſants or partridges, (except he be ſeiſed, in his own right or the right of his wife, of 10l. a-year eſtate of inheritance, or 30l. a-year of a lives eſtate, or goods to the value of 200l. or be the ſon of a knight or lord, or the ſon and heir apparent of an eſquire,) and be thereof convicted by confeſſion, or oath of two witneſſes, before two juſtices, he ſhall be committed to gaol three months, unleſs upon conviction he pay 20 s. to the churchwardens for the uſe of the poor, or after one month after his commitment he become bound by recognizance with two ſureties before two juſtices, in

20 l. a-piece, not to offend again in like manner. 1 *J.* *c.* 27. *ſ.* 3.

40 l. a-year. The next qualification relates to deer and conies only, in the 3 *J.* *c.* 13. by which it is enacted, that if any perſon not having hereditaments of 40 l. a-year, or not worth in goods 200 l. ſhall uſe any gun or bow to kill any deer or conies; or ſhall keep any buckſtall, nets, or coney dogs (except he have grounds incloſed, and uſed for the keeping of deer or conies, the increaſing of which ſaid conies ſhall amount to the value of 40 s. a-year; or keepers or warreners in their parks, warrens, or grounds); in ſuch caſe any perſon having lands or hereditaments of 100 l. a-year in fee, or for life, in his own right or the right of his wife, may take from ſuch perſon to his own uſe for ever ſuch guns, bows, buckſtalls, nets, and coney dogs. 3 *J.* *c.* 13. *ſ.* 5.

40 l. a-year. The next qualification relates to pheaſants and partridges only, and is as follows: Every free warrener, lord of the manor, a freeholder ſeiſed in his own or his wife's right of 40 l. a-year of inheritance, or lives eſtate of 80 l. or worth in goods 400 l. may take pheaſants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt *Michaelmas* and *Chriſtmas* yearly. 7 *J.* *c.* 11. *ſ.* 7.

100 l. The laſt general qualification by eſtate or degree to kill game, and which is now moſt to be regarded, is in 22 & 23 *C.* 2. *c.* 25. by which it is enacted, that *every perſon, not having lands and tenements or ſome other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100 l. per annum, *or for term of life, or having leaſe or leaſes of* 99 *years, or for any longer term, of the clear yearly value of* 150 l. (*other than the ſon and heir apparent of an eſquire, or other perſon of higher degree, and the owners and keepers of foreſts, parks, chaſes, or warrens, being ſtocked with deer or conies for their neceſſary uſe, in reſpect of the ſaid foreſts, parks, chaſes, or warrens*) *is hereby declared to be a perſon by the laws of this realm, not allowed to have or keep for himſelf or any other perſon, any guns, bows, greyhounds, ſetting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, ſnares, or other engines aforeſaid, but ſhall be and are hereby prohibited to have, keep, or uſe the ſame.* ſ. 3

Of the clear yearly value of 100 l. per annum] *M.* 23 *G.* 3. *Wethrell* and *Hall.* On an action of debt againſt the defendant, for the penalty of 5 l. for uſing a certain engine called a gun to kill and deſtroy the game, not being a perſon

ſon qualified ſo to do, the cauſe was tried at *Durham* aſſives 1782, when the jury found a verdict for the plaintiff, ſubject to the opinion of the court of king's bench, on the following caſe:—The defendant *Hall*, having an eſtate of 103l. a-year, mortgaged a part of it, of the value of 14l. a-year, to *Robert Kelſey*, for 400l.; which part being copyhold, he ſurrendered the ſame, according to the cuſtom of the manor, to the ſaid *Robert Kelſey*, who thereupon was admitted tenant. But *Kelſey* never entered upon the premiſes; *Hall* continuing in poſſeſſion, and paying intereſt of the mortgage regularly. The queſtion for the opinion of the court was, whether the defendant was duly qualified to uſe engines to kill and deſtroy game?——*Lambe* for the plaintiff contended, Firſt, that a *legal* eſtate of 100l. a-year was neceſſary to conſtitute a qualification; that here the defendant had no more than an *equitable* eſtate in the part mortgaged; and that ſuch eſtate cannot be taken notice of by a court of law in the conſtruction of an act of parliament. L. *Mansfield* intimating that it would be difficult to ſupport this ground of argument, Mr. *Lambe* inſiſted, Secondly, that if an *equitable* eſtate were conſidered as giving a qualification, ſtill in point of *annual value* the defendant had not, upon the true conſtruction of the act, an eſtate ſufficient to qualify him: that the words of the act were, the *clear* yearly value of 100l.; that this could not mean the groſs value of the eſtate, but muſt mean the net income; that ſuch it could not be, if, by incumbrances of any ſort, the iſſues and profits were brought within that ſum; that the object of the legiſlature was, to entitle thoſe only, whoſe independence, ariſing from the produce of their lands, would enable them to uſe theſe rights for the purpoſe of amuſement; that upon comparing the value of land at the time this law paſſed with its preſent value, it would be found that the meaſure of this independence had already been reduced much below the intention of the legiſlature; that if the conſtruction contended for were admitted, no degree of intereſt whatſoever in the produce of lands would be neceſſary, and the intention of the legiſlature muſt be totally fruſtrated, inaſmuch as the holder of an eſtate, whether he charged it himſelf to its utmoſt value, or had it transferred to him under ſuch charge, without having, or without ever having had, an income ariſing out of land to the amount of one farthing, muſt in ſuch caſe be entitled.——L. *Mansfield* calling on the other ſide,—— *Chambre* for

the defendant, ſtated the only queſtion to be, whether the the intereſt of the mortgage was to be conſidered as ſuch a reduction of the annual value of the eſtate as would deſtroy the defendant's qualification? and contended, that this being a penal law, could not be extended by conſtruction; that it was beſides a general law, and in its terms does not require the party to have a *legal* eſtate. That the mortgage is in ſubſtance a ſpecialty debt, the equity of redemption is conſidered as real eſtate, and deſcends to the heir of the mortgagor; who is conſidered as a debtor, and his perſonal aſſets liable in the firſt inſtance to diſcharge the mortgage; and though at law the heir of the mortgagee takes a legal eſtate, yet the perſonal repreſentatives are conſidered as entitled to receive the morgage debt. And further inſiſted, that a mortgagee can never get poſſeſſion, if the mortgagor is ready to pay the money: and that by 7 *G.* 2. *c.* 20. *ſ.* 1. it may be paid *impendente lite:* and that if the legal eſtate only were to be regarded, an eſtate of 1000l. a-year, mortgaged in fee for 100l. would not furniſh a qualification. That the only remaining queſtion was, whether the intereſt of the mortgage money was to be conſidered as an outgoing that would reduce the value of the eſtate below 100l.? and he contended, that the intereſt was not a thing iſſuing out of any part of the eſtate in the nature of a rent or ſervice; that both principal and intereſt were a debt; that the intereſt muſt be conſidered as a debt on the perſonalty, juſt as the principal is conſidered as a debt; and that the eſtate was neither made of greater or leſs value by the mortgage, but was merely a pledge for the payment of the debt; that the legiſlature, therefore, when they uſed the words *clear yearly value*, meant to advert only to the value of the eſtate itſelf, and not to the quantity of intereſt that any perſon might have in it, the thing itſelf, without any regard to the charge upon it, provided only that the party was in poſſeſſion. That in the ſame manner, in the caſe of a mortgagee in poſſeſſion, there can be no doubt but that he is entitled to kill game; and the court in ſuch caſe will not enquire into the amount of the intereſt money of the ſum advanced to the mortgagor upon his land, provided the ſecurity, the land itſelf, be of the annual value the law requires; that the court would well weigh the conſequences of ſuch a doctrine as is contended for; that the juſtices, who muſt enquire into this in a ſummary way, muſt make all perſons,

ſons, of whatever oſtenſible eſtate, diſcloſe their private circumſtances, which would be too great an extenſion of a law already conſidered in many inſtances as tyrannical; that a rent charge indeed, or ſervices iſſuing out of an eſtate, as matters of notoriety, might perhaps be conſidered by the juſtices; but of ſuch things only as were oſtenſible could they take cognizance; that if every private tranſaction in money concerns were to be laid open, if it could be ſeriouſly argued that ſuch diſcuſſions were proper ſubjects for a ſummary juriſdiction, it would be inveſting juſtices and informers with powers of haraſſing the country as far beyond any known precedent, as it was beyond the intention of the legiſlature; that their object had not been at any time an enquiry into debts, but the actual poſſeſſion of, and intereſt in, landed property, and the viſible amount of that property; that with reſpect to chooſing knights of the ſhire, the legiſlature have declared by ſeveral ſtatutes, that the mortgagor or *ceſtuy que truſt* in poſſeſſion may vote for ſuch eſtates, notwithſtanding ſuch mortgage or truſt.—*Buller* J. But he muſt ſwear that he has 40s. a-year above every charge payable in reſpect of them.—*Chambre*. But this is by the expreſs proviſion of ſubſequent (*a*) ſtatutes.———L. *Mansfield*. The privilege here is given to property, and the *ceſtuy que truſt*, the mortgagor, is really the owner; the truſtee, the mortgagee, is merely nominal. We conſider the defendant's intereſt in this court juſt as it would be conſidered in a court of equity. It is an intereſt ſubject to the payment of the mortgage; it is a qualification of property; and tho' it is not neceſſary that he ſhould have a legal eſtate, he muſt have ſuch property in the land as ſhall produce a clear income of 100l. *per annum*; or it might be carried ſo far, as that he might have nothing and yet enjoy the privilege. What then are a mortgagor and mortgagee in chancery? one the owner, and the other as having a charge upon the land; and the charge goes along with it.———*Buller* J. In the caſe of rent charges the cognizance of the juſtice is admitted; and in many others they muſt interfere, as in contracts between landlord and tenant. Neither is there any pretence on the part of the defendant to complain of hardſhip. Poſſeſſion is *prima facie* evidence of property: The defendant,

(*a*) 18 *G.* 2. *c.* 8. *ſ.* 2. and 19 *G.* 2. *c.* 28. *ſ.* 1.

therefore, muſt be preſumed to be the entire owner: The hard taſk lies upon the other party; who muſt make proof of the contrary. If the juſtice may receive proof of rent charges and ſervices, what ſhould prevent his doing the like as to mortgages? The only point then is, whether the words *clear yearly value* mean *clear yearly value to the perſon in poſſeſſion?* The words of this act would of themſelves leave little room for doubt; but when explained and ſupported by the ſtatutes of *James in pari materia*, the words of which are *over and above all charges and repriſes*, it can no longer admit of a queſtion, but that it muſt mean clear value to the perſon in poſſeſſion; for by the common rule of conſtruction, all ſtatutes upon the ſame ſubject are conſidered as making one ſyſtem of law, and conſequently the words in the two laſt ſtatutes muſt be referred to the ſtatute in queſtion. *Willes* and *Aſhhurſt* Js. concurred.—Judgment for the plaintiff. *Cald. Caſ.* 230.

What ſhall be deemed ſufficient proof of a qualification.

E. 39 *G.* 3. *K.* v. *Clarke.* This was a conviction on 5 *An. c.* 14. for keeping and uſing a greyhound for the deſtruction of game without being duly qualified. The conviction was in the uſual form, negativing ſpecifically each of the qualifications enumerated in 22 & 23 *C.* 2. The conviction then proceeded as follows: "and it duly "appears to us the ſaid juſtices in the preſence of the "ſaid defendant, that on the 22d *March* 1798, at, &c. "before A. B. and C. D. (*a*) &c. commiſſioners ap- "pointed by an act for granting granting to his majeſty "an aid and contribution for the proſecution of the war, "then and there acting as ſuch commiſſioners, did make "a declaration in writing, ſigned by him, that his *annual "income* did not exceed 50l. and being examined upon "oath depoſed that the value of the whole lands, tene- "ments, and eſtate of the ſaid defendant was then 70l. "a-year and no more, &c. and that 17l. a-year intereſt "money was then payable out of the ſaid lands, &c. and "claimed to be allowed the ſame as intereſt paid for "money charged upon the ſaid lands, &c. and the ſame "was allowed. And the defendant admits that he made "the ſaid declaration and claim of allowance, &c. and "that the value of his ſaid lands, &c. has not increaſed "ſince the time of making ſuch declaration, &c. and "that he has not ſince the ſaid 22d of *March* acquired

(*a*) The juſtices before whom the defendant was convicted.

"other

"other lands, &c. and that the 17 l. a-year intereſt "money is ſtill payable out of the ſaid lands, &c." The conviction then proceeded to ſtate that the defendant, being called upon to make his defence, ſaid that he was poſſeſſed of an eſtate in the pariſh of *Whitgift* of the yearly value of 100 l. and upwards, and produced a witneſs who ſaid that he knew the defendant's ſaid eſtate, and he thought it worth 100 l. a-year, and that he would give 100 l. a-year and upwards for it, but admitted that he would not ſwear that the defendant's ſaid eſtate was worth 100 l. a-year clear of reprizes; and the defendant having no other witneſs, &c. Wherefore, &c. —— *Per curiam.* It muſt be taken *pro confeſſo* that the defendant at the time mentioned in the conviction, when he was before the commiſſioners on the amount of his income, had not then an eſtate of 100 l. a-year in value; it is evidence out of his own mouth; and the witneſs adduced by him did not contradict this, even if he were credited to the full extent of what he depoſed; for he would not undertake to ſay that the eſtate was of that value clear of reprizes; and as to the deductions being on account of ſimple contract debts, the contrary appears by the defendant's own ſhewing, for he claimed the allowance before the commiſſioners for the intereſt of money *charged upon his eſtate.* Conviction affirmed. *Durnf.* and *Eaſt.* 8 V. 220.

Or for term of life] It hath been doubted upon theſe words, in what order of qualification an eccleſiaſtical living ſhall be ranked, which a man holds not in his own or his wife's right, but in the right of his church. It is allowed to be a life's eſtate, although it may happen to be determined ſooner, as by reſignation, deprivation, or accepting another living incompatible. But the queſtion is, whether theſe words ſhall belong to the former or the latter part of the ſentence? The difficulty ſeems to be partly occaſioned by the diſjointed manner of punctuation. But the points are no part of the ſtatute. The ſtatutes themſelves are without points: the punctuation is only made by the printer. Abſtracted from the punctuation, it ſhould ſeem that the former part of the ſentence, reſpecting the qualification of 100 l. a-year by an eſtate of inheritance, ought to terminate with the words *per annum.* And that a life eſtate, being of inferior quality, ought to be coupled with leaſehold whereof 150 l. a-year is neceſſary to conſtitute a qualification. And ſo it was deter-

mined in the case of *Lowndes*, esq. *v. Lewis*, clerk, That a life estate of less than 150l. *per annum* is not a qualification to kill game. *Cald. Cas.* 188.

Other than the son and heir apparent of an esquire] Esquire, *ecuyer*, *scutarius*, called by the Saxons *schilt knaben* or *knapen*, (from whence cometh the word *knave*, which anciently signified a servant,) is a name of dignity next above the common title of gentleman, and below a knight. Heretofore he was attendant, and had employment as a servant, waiting on such as had the order of knighthood, bearing their *shields*, and helping them to horse, or such like. And this title is of that nature with us now, that to whomsoever either by blood, or place in the state, or other eminency, we conceive some higher attribute should be given than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually stile him an esquire in such passages as require legally that his degree or state be mentioned. *Seld. Tit. of Hon.* 374. 462. 687.

Or other person of higher degree] In the order of precedence, the heralds, next below knights and their sons, and above esquires, rank (1) colonels, (2) serjeants at law, and (3) doctors in the three learned professions. 1 *Blackst.* 405.

M. 26 *G.* 3. *Jones* v. *Smart.* This was an action to recover a penalty for killing game, by 5 & 9 *An. not being duly qualified.* The question was, whether a diploma from *St. Andrew's* in *Scotland* appointing the defendant *doctor of physic*, gave him a qualification under 22 & 23 *C.* 2. *c.* 25. to kill game? *Conste* for the plaintiff argued, that supposing him to have the same rank as a doctor of the *English* universities, yet he is not such a character as was meant to be qualified by the stat. of *C.* 2. The qualification claimed must be derived from construing the words, *or other person of higher degree* in the nominative case, and supposing that every person of higher degree than an esquire is thereby qualified. That this is not the true construction of the stat. is clear by the case of *K.* v. *Utley*, 24 *G.* 3. (*a*) And supposing the doctors of the two *English* universities

(*a*) The case of *K* v. *Utley* was upon an information on the game laws, and a conviction of the defendant on the statute of *C.* 2.

univerſities have the right contended for by the preſent defendant, (which is a very doubtful matter,) yet this diploma does not confer ſuch a right. There is no inſtance in which foreign diplomas and degrees have been acknowledged here, and there is a great difference between degrees acquired by long labour and reſidence and one beſtowed in a ſummary manner, 8 *Rep* 114. Dr. *Bonham*'s caſe. And by the union, it does not follow that perſons having taken *Scotch* degrees are to be endowed with all the privileges of *Engliſh* degrees. Dr. *Gilbert* having taken his degree of D. D. in *Scotland*, wiſhed to preach at *Oxford* in his proper habit as doctor, but was not allowed: And Dr. *Pitcairn* accepted a degree at our univerſities, although he had before taken the ſame degree in *Scotland*. —— *Erſkine* in reply made three queſtions; 1ſt, Whether on the conſtruction of 22 & 23 *C.* 2. every perſon as a member of the civil ſtate, who is an eſquire or ſuperior in rank, may not kill game? 2dly, Whether a doctor of phyſic who has taken his degree in *England* be not ſuch perſon? 3dly, Whether a *Scotch* diploma does not confer the ſame privileges? As to the firſt, the language of the ſtat. is very ſtrong; the word "*other*" muſt be conſidered as the *nominative* and not as the *genitive* caſe, both in reaſon and grammatical conſtruction. It is clear the ſtat. did not mean to confine the qualification altogether to *landed* property, by extending it to the ſon and heir apparent of an eſquire, who is ſuppoſed to have no landed property of his own. The *eſquires* alſo who are enumerated by *Camden* are perſons who have no land: From 8 *Rep.* 118. we may collect, that where a ſtat. will bear two interpretations, one contrary to ſenſe, the other agreeable to it, the latter ſhall prevail: Here it was

---

C 2. as "not being the eldeſt ſon of an eſquire, or *of* other "perſon of higher degree." —— *Chambre* moved to quaſh this information on the inſertion of the word *of*; and contended, that tho' this was copied from the precedent in *Burn*, it was not warranted in law, for that by this conſtruction, neither an eſquire or a knight would be qualified as ſuch.—*Buller* J. ſaid, that the legiſlature ſeemed to him to have taken it for granted, that an eſquire or other perſon of higher degree would have a ſufficient eſtate to qualify him, and therefore they had neglected to do it expreſsly; though there was a caſe in *L. Hardwicke*'s time, where the word *of* was rejected, and no notice taken. However he was of opinion that the conviction ſhould be affirmed: And it was ſo. *Durnf.* and *Eaſt*, 1 V. 45.

evidently the intention of the legiſlature, that perſons of higher degree than an eſquire ſhould be qualified, for if the oppoſite conſtruction was to prevail, a perſon would have a derivative title, when the perſon from whom ſuch title derived would have none, and this very defendant's ſon will derive a right from his father's diploma, which it is contended the father himſelf has not. 2dly, As to the queſtion, whether an *Engliſh* doctor be of ſuperior degree to an eſquire? *Blackſtone* ranks doctors above eſquires, and ſo do the *Heralds*, but this relates only to *Engliſh* degrees: Then 3dly, does a *Scotch* diploma confer the ſame right? A *Scotch* doctor is of equal rank as an *Engliſh* one as a member of the civil ſtate: And the 4th article of the act of union ſays *there ſhall be a communication of all rights, &c.* except where expreſsly agreed to the contrary: As to the college of phyſicians and the univerſities refuſing to allow *Scotch* doctors their own privileges within their own juriſdictions, they, as private corporations, may make what regulations they pleaſe concerning their own bodies; but as to all general immunities derived from the common law, or under the act of union, they cannot deprive any body of theſe.——The court took time to conſider, but L. *Mansfield* then ſaid, that as to the latter ground he had no doubt, that all privileges granted by the ſtatutes to the univerſities, were confined to our own, and did not extend to *Scotland* or other foreign univerſities, which were governed by their own particular laws and cuſtoms. But that the general queſtion upon the conſtruction of the ſtat. of *C.* 2. ſhould not paſs undecided.—Afterwards the court delivered their opinions *ſeriatim*.——L. *Mansfield*. This is an action brought by the plaintiff againſt the defendant for uſing a gun for the purpoſe of killing game not being duly qualified. The caſe ſtates that the defendant reſted his juſtification upon a diploma from *St. Andrews* in *Scotland* conferring on him the degree of doctor of phyſic. Two objections have been raiſed: Firſt, that under this diploma, the defendant had the ſame rights and privileges conferred upon him as are acquired by a degree beſtowed by the *Engliſh* univerſities. 2dly, That doctors in the learned profeſſions are of higher degree than an eſquire, and therefore by 22 & 23 *C.* 2. are exempted from the penalties of the game laws. The ſtat. of 22 & 23 *C.* 2. has theſe words, "*other than the ſon and heir apparent of an eſquire, or other perſon of higher degree.*" For the defendant it has been contended, that *other perſon of higher degree* relates to the eſquire himſelf, and

and means that a perſon of higher degree than an eſquire is qualified; whereas on the other ſide it is contended, that it means "*other than the ſon and heir apparent of an eſquire, or the ſon of any other perſon of higher degree.*" To be ſure, abſurd conſequences may ſeem to follow from giving a privilege to the ſon which the father has not; but the queſtion is, has the ſtatute done it or not? I wiſh to have the general point determined becauſe of the conſequences: This court conſidered the point before in *K.* v. *Utley*, and there they held that the ſtatute meant *the ſons of other perſons of higher degree:* On full conſideration I am not ripe to vary from the opinion given in that judgment, all the precedents are ſo, *Burn*'s precedents give the ſame conſtruction; but what ſtruck me moſt was this, the drawer of the ſtat. of *C.* 2. certainly had the former ſtat. of *Jac.* 1. in his view; for though it does not follow the other ſtat. throughout, yet it does in that clauſe, and that does not admit of a doubt, for there the word "*of*" is expreſsly inſerted: I cannot therefore unneceſſarily vary from the deciſion that has been given; I ſay *unneceſſarily*, becauſe I am ſatisfied on the other ground of the opinion I delivered the other day; on that ground there is not a colour for ſaying that the defendant is qualified by the act of union; it is true, that by the 4th article of that act, the *Scotch* have the ſame general privileges as the *Engliſh*, but then they muſt have the ſame qualifications, otherwiſe they come not within the ſame deſcription, for the general article which declares, there ſhall be a communication of all privileges, can only mean ſuch as are of a general nature: A burgeſs of *London* is endued with certain privileges, to which a burgeſs of *Edinburgh* has no claim; ſo in every caſe where a privilege is of a qualified nature, it muſt be underſtood with that qualification; a doctor of the *Engliſh* univerſities may become a member of the college of phyſicians, may plead in *Doctors Commons*, and has various other privileges from which a *Scotch* doctor, as ſuch, is excluded; the qualification therefore muſt be from *Oxford* or *Cambridge*. In like manner, the ſtat. allowing men of certain degrees to have certain diſpenſations for holding two livings, neceſſarily refer to ſuch degrees only as are obtained in an *Engliſh* univerſity, for the church of *Scotland* is diſtinct from ours, and admits not of the ſame rules; therefore whatever rank the defendant may hold by courteſy, he is not in point of law to be conſidered as a doctor to this purpoſe. ——*Willes* J. It is my misfortune to differ from the reſt of the court on the

the conſtruction of the ſtat. of *C.* 2. The caſe of the *K.* & *Utley* came before us on a motion to quaſh a conviction on account of the word "*of*" being inſerted before the words, "*other perſons of higher degree*" I find by looking at my own paper book that the caſe was but ſlightly argued, and the court principally relied upon the ground of all the precedents having been in that form; I adopted that opinion at that time, but I now retract my aſſent to that determination for three reaſons: 1ſt, The game laws are already ſufficiently oppreſſive, and therefore ought not to be extended by implication; 2dly, Becauſe I think that in grammatical conſtruction and propriety the words "*other perſons*" muſt be taken to be in the *nominative* and not in the *genitive* caſe; 3dly, Becauſe a different conſtruction is unnatural and unreaſonable, and muſt be productive of endleſs inconvenience and abſurdity. Firſt, nothing can be more oppreſſive than the preſent ſyſtem of the game laws; we are told they aroſe from the old foreſt laws, which reſtrained the right of killing game to much narrower limits; and hence that theſe new regulations encroach on no privileges to which we were before entitled; but on the contrary are mild when compared with the ſources from whence they flow. *Blackſtone* however, in 2d Book of his Commentaries (*c.* 27.) holds a different language: And wherever a law is productive of tyranny, I ſhall ever give my conſent to narrow the conſtruction. 2dly, According to grammatical conſtruction, I think the words "*other perſons of higher degree*" muſt be taken in the *nominative* caſe, for want of the word "*of*," and I am the more confirmed in that opinion, for where the legiſlature meant the *genitive* caſe they have expreſsly inſerted the word "*of*," as in 1 *Jac.* 1. *c.* 27. and 9 *An.* *c.* 5. which relates to qualifications to ſit in parliament. But 3dly, what I moſt rely on, are the many abſurdities which muſt flow from a different interpretation; the eldeſt ſon of a barriſter at law, or of a captain in the army or navy will be qualified as ſuch, and yet the father himſelf will not; even a peer who is not qualified by property, will not be privileged to kill game, tho' his ſon who claims through him will: the act could never mean to annex the qualification to *land* only, for no landed eſtate however large will confer the title, but it muſt be acquired either by office, the king's patent, or ſome of the means laid down by *Selden* and *Camden*. A lord of a manor is certainly not an eſquire by virtue of his manor, or royalty, tho' in common acceptation

ceptation he is conſidered as ſuch; this is evident from the 2d *ſec.* of 22 & 23 *C.* 2. *c.* 25. which empowers lords of manors or other royalties, *not under the degree of an eſquire*, to appoint gamekeepers, but no lord of a manor under that rank can make ſuch an appointment, whatever his eſtate may be. On the other hand, was ever an eſquire, ſince the paſſing of this act, convicted on it? If no ſuch inſtance can be produced, that ſhews the general ſenſe of the nation as to this act, and is a much more powerful argument, and has greater weight with me, than any faulty precedent in *Burn*: From the preambles of the ſtatutes on this ſubject, it is plain they are chiefly pointed againſt perſons of low degree, to prevent mechanics from leaving their employments to deſtroy the game, to the prejudice of noblemen, gentlemen, lords of manors, and others: For thoſe reaſons I think gentlemen of this deſcription ought not to be deprived of their amuſements, and this is my opinion on the general import of the act; how far it may affect the preſent queſtion is another matter. As to the 2d point, If an *eſquire as ſuch* is qualified, I am likewiſe of opinion that *doctors* are ſo; to this it is objected, that at all events, a perſon who has not taken his degree in *England* is not to be conſidered in the light of a perſon qualified by the ſame means as thoſe are; but this objection is in my mind done away by the 4th article of the union, which enacts, "that there ſhall be a communication of all privileges, except where it is expreſsly provided to the contrary:" As to their being excluded by the college of phyſicians, that is merely the reſult of a local inſtitution: However, as the reſt of the court are againſt me on the firſt point, I ſhall give no further opinion upon this.——*Aſhhurſt* J. I ſee no reaſon to depart from the conſtruction which has been put upon the ſtat. 22 & 23 *C.* 2. by this court in the caſe of *K.* & *Utley*. The game laws are to be conſidered as poſitive rules, rather than as founded on reaſon; therefore it is ſafer to adopt what they have actually ſaid, than to ſuppoſe what they meant to ſay: Though by the ſtat. of *Jac.* 1. rank as well as property gave a qualification; yet under this ſtat. of *C.* 2. a man can only be qualified by means of property; but ſaid the legiſlature, the heir apparent, who is in the line of ſucceſſion, ſhall likewiſe be qualified, from a ſuppoſition that the eſquire was ſo already; according to which conſtruction I cannot think that it was in their intention purpoſely to exclude the father, but in fact they have done it; and the matter is put out of all doubt by the ſtat. of

James

James which expreſsly excludes them, and ſo does the ſtat. of *C.* 2. as effectually in my opinion; the blunder has been adopted perhaps without meaning it; this appears to me from the wording of the clauſe, for it ſhould ſeem ſtrange that in fixing the qualifications, they ſhould begin with property, then go to a derivative qualification, and then return to a very large deſcription of original ones, namely quality and degree. In a grammatical ſenſe alſo, it muſt be taken to be in the *genitive* caſe in the ſame manner as if the word "*of*" had been actually inſerted. I ſee no reaſon to depart from the conſtruction put upon the ſtat. *C.* 2. in *K.* and *Utley* as founded on the precedent in *Burn*; nor can any inconvenience reſult from it, for the legiſlature may hereafter extend the qualification if they think proper. It is not neceſſary to ſay any thing upon the other head, if it were, I ſhould agree with my lord.——— *Buller* J. The caſe of the *K.* & *Utley* did not paſs with ſo little argument as my brother *Willes* ſuppoſes, for I remember it was argued very fully, and the grounds of our deciſion were; 1ſt, The conſtant form of convictions on the game laws, which ought to have great weight with the court: 2dly, From a compariſon of the ſeveral acts relating to game. But notwithſtanding that deciſion, if I ſaw any reaſon to alter the opinion which I then gave, I would be ready to do it and correct my miſtake; but upon full conſideration, in my opinion that judgment was right: 1ſt, Taking this clauſe of *C.* 2. in a grammatical ſenſe, had the exception extended no farther than to "*other perſons of higher degree*," ſtill I ſhould have thought that the word "*of*" was intended, and that the word "*other*" was to be underſtood in the *genitive* caſe; but I am confirmed in my opinion by the manner in which the clauſe proceeds, for the words immediately following are, *and the owners and keepers of foreſts, parks, chaſes, and warrens*; now had the preceding part of the ſentence *or other perſons of higher degree* been intended to have been taken in the *nominative* caſe, why did the legiſlature alter the mode of expreſſion? for when they ſpeak of other perſons to be exempted in their own right, they change the words. Again it is aſked, what reaſon is there for excepting the eldeſt ſon alone, and not the younger? The only reaſon that can be given is, becauſe he is the preſumptive heir to the real eſtate, which is a further argument for ſuppoſing that landed qualification was the immediate object of the ſtat. and in fact this act of *C.* 2. had that principally in view, for it repeals the perſonal

qualification

qualification of the ſtat. of *James*, and leaves no other but that of land, with the exception in favour of the heir apparent, on account of his right of ſucceſſion. And we may obſerve, that there is the ſame exception introduced into the act of qualifications of members of parliament. I have no doubt that the legiſlature took it for granted that eſquires themſelves would be qualified in reſpect of their land, and for the reaſons aſſigned, extended the qualification to their eldeſt ſons. So that had the legiſlature been aſked at the time of making this act, whether they intended to exclude the younger ſons of *dukes?* they would have anſwered *no;* but I am as firmly perſuaded, that had the ſame queſtion been put to them reſpecting *doctors*, they would have anſwered in the *affirmative:* Be this as it may, we are bound to take the act as they have made it; a *caſus omiſſus* can in no caſe be ſupplied by a court of law, for that would be to make laws; nor can I conceive that it is our province to conſider, whether ſuch a law that has been paſſed is tyrannical or not: It has been ſaid that this act is only pointed againſt perſons of low degree, as appears from the preamble; to conſider the preamble of an act is to be ſure in general a good mode to come at the meaning of the legiſlature, but it does not aſſiſt us in this caſe, for we gather from the enacting part of the ſtat. that a perſon who has a freehold of 99 l. *per an.* or a leaſehold for 99 years of 149 l. *per an.* is not qualified, but can it be ſaid that either of theſe is a mean or vulgar perſon? Thus far we have been conſidering the ſtat. of *C.* 2. alone, but now conſider it as coupled with the former ſtatutes which are *in pari materia*. In the ſtat. of *James*, the ſame words *other perſons of higher degree* are uſed, and there it is clear they are uſed as part of the deſcription of the ſons, for the particle "*of*" is expreſly prefixed; now if the ſtat. of *C.* 2. is any ways doubtful we muſt expound it by the ſtat. of *James*, and that is confined to ſons alone. But the ſtrong ground of all is, that all the acts relative to game have been from time to time reſtrictive of the right to kill game; they aboliſh ſome qualifications and raiſe the others, and conſequently leſſen the number of qualified perſons, and no one ſtatute can be conſtrued into an enabling one; this is deciſive. There is not a pretence to ſay that a doctor of phyſic is within the exception of the ſtatute of *James*; then if he is not within that ſtatute, how can he be ſaid to be qualified under the ſtatute of *C.* 2. which is a

reſtraining

reſtraining one, and gives no new qualification whatever? As to the other queſtion, whether a doctor of phyſic of the defendant's deſcription is qualified? I think he is not on another ground, but on this head I refer generally to what my lord has ſaid.——Judgment for the plaintiff *Durnf. & Eaſt*, 1 V. 44.

Searching for and ſeizing dogs and engines.

And all lords of manors or other royalties may authorize their gamekeepers within their reſpective manors or royalties, to take and ſeize all ſuch guns, bows, greyhounds, ſetting dogs, lurchers, or other dogs to kill hares or conies; ferrets, tramels, lowbels, hays, or other nets, hare-pipes, ſnares, or other engines for the taking and killing of conies, hares, pheaſants, partridges, or other game, as within the precincts of ſuch reſpective manors, ſhall be uſed, by any perſon who by this act is prohibited to keep or uſe the ſame: And moreover, any ſuch gamekeeper (or other perſon being thereunto authorized by warrant (H) *of one juſtice), may in the day time, ſearch the houſes, out-houſes, or other places of any ſuch perſon by this act prohibited to keep or uſe the ſame, as upon good ground ſhall be ſuſpected to have or keep in his cuſtody any guns, bows, greyhounds, ſetting-dogs, ferrets, cony-dogs, or other dogs to deſtroy hares or conies, hays, tramels, or other nets, lowbels, hare-pipes, ſnares, or other engines aforeſaid, and the ſame may ſeize, detain, and keep for the uſe of the lord of the manor or royalty where found or taken, or otherwiſe to cut in pieces or deſtroy, as things by this act prohibited to be kept by perſons of their degree.* 22 & 23 C. 2. c. 25. ſ. 2.

20 s. penalty for keeping dogs and engines.

And if any unqualified perſon ſhall have, keep, or uſe any bows, greyhounds, ſetting dogs, ferrets, coney-dogs, hays, lurchers, nets, tunnels, lowbels, hare-pipes, ſnares, or any other inſtruments for deſtruction of fiſh, fowl, or other game, and ſhall not give a good account before a juſtice, to the ſatisfaction of ſuch juſtice how he came by the ſame, or elſe ſhall not in ſome convenient time (to be ſet by ſuch juſtice) produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof; he ſhall forfeit for every offence not under 5 s. nor above 20 s. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour. And if any perſon ſo produced or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted

victed thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. 4 & 5 *W.* *c.* 23. *ſ.* 3.

And all lords of manors or their gamekeepers may within their manors oppoſe and reſiſt ſuch offender, in the night time, in the ſame manor as if the fact had been committed in any ancient chaſe, park, or warren, incloſed. *ſ.* 4.

And no *certiorari* ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in 50l. with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed, or *procedendo* granted, full coſts and charges; and in default thereof, the juſtice ſhall proceed to the execution of the conviction. *ſ.* 7.

5 l. penalty for keeping dogs and engines; and the ſame to be ſeized

But by a ſubſequent ſtatute 5 *An.* *c.* 14. *If any perſon not qualified by the laws of this realm ſo to do, ſhall keep or uſe any greyhounds, ſetting-dogs, hays, lurchers, tunnels, or any other engine to kill and deſtroy the game, and ſhall be therefore convicted* (IKL) *on the oath of one credible witneſs, before one juſtice, he ſhall forfeit* 5 l. *half to the informer, and half to the poor of the pariſh where the offence was committed, to be levied by diſtreſs and ſale of the offender's goods* (M); *for want of diſtreſs, to be ſent to the houſe of correction* (N) *for three months for the firſt offence, for every other offence four months.*

And any juſtice, or lord within his manor, may take away ſuch dogs, nets, or other engines, which ſhall be in the power or cuſtody of any perſon not qualified, and may keep the ſame to his own uſe without being accountable to any perſon for the ſame. ſ. 4.

Unqualified perſons being out with a qualified perſon.

If any perſon] *H.* 13 *G.* 3. *K.* & *Newman.* An information was moved for againſt a juſtice, for convicting two perſons for uſing greyhounds to deſtroy game; which perſons were themſelves unqualified, but were out with a qualified perſon; which they pleaded in their defence, and that the dogs were not their own. The juſtice ſaid he knew it, and thereupon convicted them.—On behalf of the juſtice, Mr. ſerjeant *Burland* ſaid, that the convicted perſons being by their own evidence not qualified, and it not appearing by any evidence expreſsly that the perſon they were with was a qualified perſon, or that the dogs were (as they aſſerted) not theirs, but his, he hoped the information would not be granted. It was further ſaid, that it hath never been adjudged, that unqualified perſons, out with qualified, were free from the penalty; nor that

that it ſignified, whether the dogs belonged to the qualified men, or to the others: For the being out to *uſe* them, was ſufficient within the ſtatute; or at leaſt it had been much doubted.——L. *Mansfield:* Let the juſtice pay the whole coſts, and go before the maſter.——Upon which, the ſerjeant ſaid, Does your lordſhip then think them ſufficiently qualified?——L. *Mansfield:* Yes; and it is matter of tenderneſs to take it this way. I know you to be very judicious, and thought you led to it. The defence you ſet up for the juſtice was none; if it had ever been thought of by him. Shall not a gentleman take any body out with him, to beat the buſhes and ſee a hare killed? It appeared alſo on the evidence, that the ſummons was taken out on the *Sunday*, and that the parties aſked an hour's time to go for Mr. *Linch*, the gentleman they went out with, who, they ſay, is worth ſeveral hundreds a-year. It is not pretended on the other ſide, but they might have brought this witneſs in three or four hours at longeſt. This (as his lordſhip added) with ſome of the above-mentioned, were very aggravating circumſtances: However, you know the ſtrength of your own caſe: Take it by way of information.——The ſerjeant, however, thought it adviſeable to deſire leave to refer it to the maſter. Which was granted accordingly. *Lofft.* 178.

A huntſman going out with hounds without his maſter.

E. 13 *G.* 3. *Pallant* and *Roll.* Treſpaſs, for that the defendant, being a diſſolute perſon, neglecting his employment, and following hunting and other game, and by no means qualified by law ſo to do, broke and entered the plaintiff's cloſes, and with dogs, guns, and other engines for deſtruction of the game, hunted upon the ſaid cloſes, trod down the graſs and corn, and broke the fences, againſt the form of the ſtatute. On Not Guilty pleaded, and iſſue thereon, a verdict was found for the plaintiff, at *Bury* aſſizes, for 1 s. damages, ſubject to the opinion of the court upon the following caſe: The defendant was not qualified in his own right to kill game, but was, and for three years had been, a menial ſervant and huntſman to *Robert Leman* eſq. a gentleman of 1500 l. a-year eſtate, who had kept hounds for 20 years; and the defendant went out by his maſter's order with the hounds, his maſter not being preſent, and was beating over the plaintiff's grounds. The plaintiff deſired the defendant to go off his land, which he refuſed, and at length found a hare, and hunted it over ſeveral pieces of land mentioned in the declaration, two of which were ſown with wheat. The queſtion

queſtion was, Whether, if the court ſhould be of opinion that the defendant is not a diſſolute perſon, or the like, under the ſtatute of 4 & 5 *W.* the plaintiff can recover againſt him in this action upon the ſtatute? or whether he ought to have brought a common action of treſpaſs for breaking his cloſe? By the court: We have no doubt, but that the defendant is not a diſſolute perſon within the meaning of the act. The only real queſtion is, Whether, as this action is framed, the plaintiff can recover any thing? He certainly cannot have his full coſts. If he cannot recover any thing, but is nonſuit, he muſt pay coſts. If he can recover, as upon a common action of treſpaſs, he ſaves his coſts. Now certainly any man might have always brought an action of treſpaſs for hunting upon his ground. For this injury, among others, the ſtatute of *Glouceſter* gave coſts as well as damages. The ſtatute 22 & 23 *C.* 2. *c.* 9. to prevent vexation, lowered the coſts, and if leſs than 40s. recovered, gave no more coſts than damages. This ſtatute of 4 & 5 *W.* reſtored full coſts again, even in caſe of ſmall damages recovered againſt diſſolute and other perſons deſcribed in the ſaid ſtatute. But as we are of opinion, that the defendant is not within theſe deſcriptions, the offence falls back upon the ſtatute of *C.* 2. whereby the plaintiff ſhall recover no more coſts than damages. And the verdict was entered by conſent, that the jury find the defendant not a diſſolute perſon, but guilty of the treſpaſs, damages 1s. coſts 1s. *Black. Rep.* 900.

Several unqualified perſons being out together.

In the caſe of *Peſhall* v. *Layton*, *M.* 29 *G.* 3. L. *Kenyon* Ch. J. ſaid, that where ſeveral unqualified perſons offended by going out together and killing a hare, that only one penalty can be recovered, though the proſecutor has his election which he will ſue. *Durnf.* and *Eaſt*, 2 V. 712.

Alſo in the caſe of *K.* v. *Bleaſdale* and another, *T.* 32 *G.* 3. Which was a conviction on 5 *An. c.* 14. *ſ.* 4. for uſing a greyhound to deſtroy game without being qualified; for which the defendants were convicted in 5l. *each*; which the *court*, without hearing any argument, ſaid, could not be ſupported, for that it was only one offence, and that the magiſtrate ſhould only have convicted them in one penalty. And they ſaid that this point had been ſeveral times decided; in *Hardman* v. *Whitacre* (*a*) and in others. ——Conviction quaſhed. *Durnf.* and *Eaſt*, 4 V. 809.

(*a*) *Bull.* N. P. 189.

Not qualified by the laws of this realm] In the caſe of *K.* and *Chandler*, *T.* 12 *W. Holt* Ch. J. in delivering the opinion of the court, upon a conviction for deer ſtealing, ſaid, that in theſe convictions by juſtices of the peace in a ſummary way, where the ancient courſe of proceeding by indictment and trial by jury is diſpenſed with, the court may more eaſily diſpenſe with forms; and it is ſufficient for the juſtices, in the deſcription of the offence, to purſue the words of the ſtatute, and they are not confined to the legal forms requiſite in indictments for offences by the common law. L. *Raym.* 581.

T. 10 *An. Q.* and *Matthews.* On a conviction upon this ſtatute, exception was taken, that the conviction reciting the defendant not to be a perſon ſo and ſo qualified, and enumerating diſtinctly the ſeveral qualifications in 22 & 23 *C.* 2. omitted a new qualification allowed by this act, namely, that he was not a perſon authoriſed by a lord (or lady) of a manor to kill game for his uſe. And by the court: Had it been generally laid thus, that he not being a perſon qualified according to law, and ſo on, it had been enough; but the qualifications being diſtinctly and ſeverally mentioned, the omiſſion of one is fatal. 10 *Mod.* 26. [But the caſe was adjourned.]

M. 4 *G. K.* and *Marriot.* There was a conviction for keeping a greyhound; reciting that one *William Toune* came and informed, that the defendant being a perſon not qualified to keep a greyhound, did nevertheleſs keep one at ſuch a place, and therewith killed ſeveral hares; and that he being ſummoned did appear, and being aſked what he had to ſay, offered nothing in excuſe, and therefore the juſtice convicted him. It was objected, that the juſtice ſhould ſet out, why the defendant is not a qualified perſon as that he is not the ſon of an eſquire, nor has 100 l. a-year in his own or his wife's right: For he ought not to make himſelf the ſole judge, but give the reaſons at large. *Parker* Ch. J. ſeemed to think the conviction would be good, having followed the words of the ſtatute, and that if the defendant was qualified, he ought to have ſhewn it before the juſtice, being ſummoned for that purpoſe. *Eyre* J. ſtarted an objection, that it was not the juſtice that had taken upon him to ſay the defendant was not qualified; but only the witneſs: for the conviction runs, that the witneſs being ſworn ſaith, that the defendant *being a perſon no way qualified* did ſuch a day keep a greyhound; ſo that it appears,

the witneſs has given the law to the juſtice, and takes upon himſelf to judge of the defendant's qualifications, and the juſtice is only made uſe of as an inſtrument, to reduce the opinion of the witneſs into a conviction. By *Parker* Ch. J. the *being not qualified* ſhould be the concluſion of the juſtice, and not the words of the witneſs; for he ought not to ſwear generally a man is not qualified, and ſuch a general proof will not be good: This is only an invention to ſupport a conviction in general terms, which would be bad if the particular facts were alleged. *Pratt* J. Where the juſtices have a ſummary juriſdiction, and no appeal lies, (as in this caſe,) we muſt keep them up ſtrictly to the law: and I ſhould be glad if we could make them ſet out the whole particularly. The caſe was adjourned. And afterwards *Pengelly* ſerjeant mentioned two caſes, *Q.* and *Hayward*, *E.* 12 *An.* There it was, *not being qualified, licenſed, or authoriſed to keep any engine*, and it was quaſhed. The other was in the ſame term, and quaſhed, becauſe no qualifications were mentioned. And towards the end of the term this conviction was quaſhed; and the principal reaſon declared to be, becauſe the witneſſes had taken upon themſelves to judge of the qualifications. *Str.* 66.

H. 12 *G. K.* and *Hill.* The defendant was convicted, for unlawfully keeping a lurcher and a gun to kill and deſtroy the game, *not being qualified by the laws of this realm ſo to do.* And the conviction being removed into the king's bench by certiorari, was quaſhed; becauſe it was only averred generally, that he was not qualified, and did not aver that the defendant had not the particular qualifications mentioned in the ſtatute, as to degree, eſtate, and the reſt. L. *Raym.* 1415.

E. 9 *G.* 2. *Bluet* and *Needs.* In an action *qui tam* on the ſtatute, it was objected, that it is not ſufficient to ſay he was not qualified, without ſhewing he had not 100 l. a-year, nor other eſtate which makes a qualification. By the court: It is ſufficient if the words of the ſtatute be purſued; and the defendant may come in and ſhew his qualification. Indeed, *convictions* have been quaſhed for not ſetting forth what was the want of qualification, becauſe it muſt be made out before the juſtice, that he had no ſuch qualification as the law requires; and therefore the juſtice ought to return, that he had no manner of qualification, before he can convict the defendant. *Comyns*, 522.

M. 12 *G.* 2. *K.* and *Bryan.* Which was a conviction on the gin act; exception was taken, that there was no averment, that it was not ſold to be uſed in medicine; and the caſes on the game act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game. On the other hand, it was inſiſted that the reaſon of that was, becauſe thoſe were in the enacting clauſe, whereas this about medicine comes in by way of proviſo, and is by way of defence to be ſhewn on the defendant's part. And for that purpoſe was cited *K.* and *Theed*, *M.* 11 *G.* where in a conviction for obſtructing an exciſe officer on the 8 *An. c.* 9. it was objected, that it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but it was held to be well, and that its being in the night ſhould have been ſhewn on the defendant's part. And by the court. This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. And the conviction was confirmed. *Str.* 1101.

Finally, in the caſe of *K.* and *Jarvis*, *H.* 30 *G.* 2. The conviction did ſet forth, that the defendant did unlawfully keep and uſe, and had in his cuſtody and poſſeſſion, one ſetting dog and ſetting net, for the deſtruction of the game; and that he the ſaid *Jarvis* was not then anywiſe qualified, impowered, licenſed, or authoriſed, by or according to the laws of this realm, to kill game. It was moved to quaſh this conviction. And by L. *Manſfield* Ch. J. It is now ſettled by the uniform courſe of authorities, that the qualifications muſt be all negatively ſet out: Otherwiſe the juſtices have no juriſdiction over the perſons killing game, or keeping dogs or engines for the deſtruction of it. The *obiter* ſaying in 10 *Mod.* (if it was a book of better authority than it is) would ſignify nothing, when the determinations are the other way. There is a great difference between the purview of an act of parliament, and a proviſo in an act of parliament. In the caſe of *K.* and *Marriot*, where the witneſs ſwears only generally, it was holden ſufficient: And the juſtices who convict upon the evidence of the witneſs can have no other or further ground to go upon, than what the witneſs ſwears. In the caſe of *K.* and *Hill*, it is the very point eſtabliſhed and ſettled, that the general averment is not ſufficient, and that it muſt be averred that the defend-

ant

ant had not the particular qualifications mentioned in the ſtatute. In the caſe of *Bluet*, *qui tam*, and *Needs*; the general averment of the defendant's not being qualified, was holden to be ſufficient upon an action, though inſufficient upon a conviction: The diſtinction is obvious between an action and a conviction. In the preſent caſe, the witneſs ſwears generally, that the defendant was not qualified. The juſtices adjudge it generally, only. The ſtream can go no higher than the ſpring head. So the concluſion, which the juſtices draw from the teſtimony of the witneſs, muſt be as general as that teſtimony. In the caſe of *K.* and *Pickels*, *M.* 19 *G.* 2. it was laid down as a rule, that the want of the particular qualifications required by the 22 & 23 *C.* 2. *c.* 25. ought to be negatively ſet out in convictions. And the only queſtion there was, Whether it was neceſſary to add the inferred or argumentative qualification, collected from the 5 *An. c.* 14. but not mentioned in the 22 & 23 *C.* 2. *c.* 25. of his not being lord of a manor? *Exceptio probat regulam:* Nor was the general rule at all doubted or diſputed in that caſe. In indictments upon the 8 & 9 *W. c.* 26. for having a coining preſs, every thing which ſhews that the defendant had no authority, muſt be negatively ſet out: And ſo it was done, in the indictment of *Bell*, which was lately argued before all the judges. I take the point to be ſettled, by the conſtant tenor of all the authorities: and I think upon very good reaſon (if there was need to enter into the reaſon at large, after it has been fully ſettled already).———Mr. J. *Deniſon* concurred, and ſaid, it was a clear caſe, and that it was fully ſettled and eſtabliſhed, that in theſe convictions, the want of the particular qualifications mentioned in the 22 & 23 *C.* 2. ought to be negatively ſet out. If not, the juſtices have no juriſdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he hath not the qualifications which are ſpecified in that act, nor any of them. Indeed you are not obliged to go further than the words of this act of parliament of the 22 & 23 *C.* 2. and that was the caſe of *K.* and *Pickles*. But however in that caſe, the preſent point was eſtabliſhed, and taken to be indiſputable.———Mr. J. *Foſter* alſo concurred, and ſaid, that on negative acts of parliament, the point is fully ſettled and eſtabliſhed, that the particular qualifications mentioned in the purview of them, muſt be negatively ſpecified in convictions

made upon them.———And by the court unanimouſly, the conviction was quaſhed. *Burr. Manſf.* 148.

Keeping. *Shall keep or uſe*] *H.* 8 *G. K.* and *Filer.* Conviction for *keeping* a lurcher to deſtroy game, not being qualified. Exception was taken, that it was not ſhewn he *uſed* the dog to deſtroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, the ſtatute is in the disjunctive, *keep* or *uſe*; ſo that the bare *keeping* a lurcher is an offence; and ſo it was determined in the caſe of *K.* and *King*, *E.* 3 *G.* which was a conviction for keeping a gun; and it was not doubted by the court, whether the *keeping* was not enough to be ſhewn, but the only queſtion they made was, Whether a gun was ſuch an engine as is within that ſtatute? and in that caſe a difference was taken, as to the keeping a *dog*, which could only be to deſtroy the game; and the keeping a *gun*, which a man might do for the defence of his houſe. And the conviction was confirmed. *Str.* 426.

Keeping and uſing. *E.* 22 *G.* 3. *K.* v. *Hartley.* This was a conviction on 5 *A. c.* 14. for *keeping* and *uſing* a *greyhound* to kill and deſtroy the game.———On a rule to ſhew cauſe why this conviction ſhould not be quaſhed, *Chambre*, took two objections: That it was not fully and ſufficiently ſtated, that there had been an uſing of the greyhound (that is) how, and in what manner, and for what purpoſe. 2d, That it was not expreſsly and poſitively averred, that he had kept and uſed a *greyhound* at all; being only ſet forth, that he kept and uſed a dog *called* a greyhound, but that it might be called ſo and yet be another kind of dog; that it might be an *Italian* greyhound, or might be kept for the protection of a houſe, or other purpoſes than to kill or deſtroy the game.———By L. *Manſfield.* Convictions muſt certainly be preciſe, that the court may ſee whether the offence committed falls within the juriſdiction of the magiſtrate; and muſt be quaſhed if not ſo. In this act there are two offences deſcribed, a *keeping* and *uſing*; and the legiſlature mean, that there may be a keeping to deſtroy, &c. which is not of neceſſity to be proved by an uſing to that purpoſe; if it were ſo it would be tautalogous, for ſuch evidence would be a proving of the other offence: the keeping therefore of a thing prohibited being an offence under the act, it is neceſſary *prima facie* evidence of a keeping for the purpoſe prohibited, and it is incumbent upon the defendant

ſendant to ſhew that it is kept for another purpoſe, as that in the preſent caſe it is a houſe dog, a favourite dog, or a particular ſpecies of greyhound: The deſcription cannot be more preciſe unleſs ſome particular inſtance of uſing is ſhewn, which if keeping of itſelf conſtitutes an offence, cannot be neceſſary. As to the other objection, that the averment is defective in ſtating only that this was a dog *called* a greyhound, I think it poſitive enough: It muſt mean the dog of that ſpecies generally known in this country. —— The other judges concurred. ——Rule diſcharged and conviction affirmed. *Cal. Caſ.* 175.

Uſe] In the caſe of *K.* and *King* aforeſaid, *Parker* Ch. J. ſaid, that walking about with intent to kill game, is evidence of *uſing* the inſtrument for that purpoſe. 1 *Seſſ. C.* 88. What ſhall be deemed uſing.

And in the caſe of *K.* v. *T. Davis*, *H.* 35 *G.* 3. which was a conviction on the above ſtatute 5 *An. c.* 14. *ſ.* 4. for keeping and uſing a gun for the deſtruction of game. It appeared on the conviction, that on, &c. at, &c. "one credible witneſs, (viz.) *R. Pyndar* of *Hadſon*, aforeſaid, (where the offence was committed,) upon his oath, &c. in the preſence of the defendant, depoſed, &c. that the aforeſaid *T. Davis* on, &c. at, &c. not having the qualifications, &c. (repeating them) did keep and uſe a certain engine called a *gun*, with intent to kill and deſtroy the game; and that he the (witneſs) was ſatisfied that the ſaid *T. Davis* did keep and uſe the ſaid gun for the purpoſe aforeſaid, from the circumſtance of his hearing a gun go off, and obſerving that it was fired by the ſaid *T. Davis*, who was then walking about a piece of ground in the pariſh of *Hadſon* aforeſaid, with that apparent intent," &c. —*Erſkine* and *Lane* took two objections to this conviction; 1ſt, That the witneſs was incompetent, becauſe he was an inhabitant of the pariſh where the offence was committed; 2dly, If competent, that his evidence was not ſufficient to ſupport the conviction. The evidence is, that the defendant "did keep and uſe a certain engine called *a gun*, with intent to kill and deſtroy the game." If this had been a dog or a ſnare, this evidence perhaps would have been ſufficient, but the defendant may have kept and uſed a gun for a variety of purpoſes beſides that of killing game. Keeping or uſing a gun is not of itſelf an offence within the act, *K.* v. *Gardiner* (*a*); it muſt be kept or uſed with an intent to kill game, and

(*a*) *Poſt*, next caſe but three.

though the witneſs has undertaken to ſwear to the defendant's intention, that is not ſufficient, if the reaſon on which his oath is founded do not warrant ſuch a concluſion: now the only reaſon aſſigned by the witneſs is, that the defendant fired a gun, and "walked about a piece of ground with that apparent intent;" to kill game cannot be collected from the mere circumſtance of a perſon carrying a gun.—L. *Kenyon*, Ch. J. (ſtopping *Bower*, contra.) The firſt objection is anſwered by the ſtat. 27 *G.* 3. *c.* 29. which was paſſed to prevent difficulties of this kind, and to enable inhabitants and pariſhioners to give evidence in proſecutions where the penalty is given to the pariſh, provided it do not exceed 20*l.* With regard to the other objection, here was evidence tending to prove the offence. That being the caſe, we have no authority to examine further, and ſee whether the concluſion drawn by the magiſtrate, be or be not the inevitable concluſion from the evidence. It is ſufficient in convictions, if there were ſuch evidence before the magiſtrate as in an action would be ſufficient to be left to a jury: here we cannot ſay that there was no evidence of the fact for the conſideration of the magiſtrate. In *K.* v. *Gardiner*, the defendant was only charged "with having and keeping a gun, being an engine for deſtroying game."—*Groſe* J. of the ſame opinion. Conviction affirmed. *Durnf.* and *Eaſt*, 6 V. 177.

Any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engines] *H.* 13 *G.* 2. *Hooker* and *Wills.* An action was brought on the 8 *G. c.* 19. for uſing a *hound* to deſtroy game. And after a verdict for the plaintiff, the judgment was arreſted; for the ſtatute of the 5 *An. c.* 14. has not the word *hound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. The ſtatute of the 22 & 23 *C.* 2. *c.* 25. has indeed general words *or any other dogs to deſtroy game*; but this is not a conviction on that ſtatute. *Str.* 1120.

Nor indeed could it have been a conviction on that ſtatute for any penalty in certain for killing and deſtroying the game; for the ſtatute of the 22 & 23 *C.* 2. doth not inflict a general penalty upon perſons unqualified who ſhall kill and deſtroy the game; but only declares, who ſhall or ſhall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to ſeize the dogs, nets, and other engines of ſuch unqualified perſons. But if the defendant did kill the game, and had the ſame in his cuſtody, he might have been proſecuted for the penalty of

20*s.*

20 s. for ſuch offence, by the ſtatute of the 4 & 5 *W.* hereafter following.—But then the conſequence of all this will be, that it is not penal barely to keep a *hound* on this ſtatute of the 5 *Ann.* but if any unqualified perſon ſhall do ſo, the gamekeepers or others, authoriſed by a juſtice's warrant, may ſeize and keep or deſtroy the ſame, by the aforeſaid ſtatute of the 22 & 23 *C.* 2.

So in the caſe of *Reaſon* and *Liſle*, *T.* 11 *G.* 2. On an action upon the ſtatute, the plaintiff declared, that the defendant did keep and uſe a *dog* to deſtroy the game. It was objected, that he ought to have expreſſed what ſort of dog; for it might be a maſtiff or a lap-dog, which might chance to kill game; and the ſtatute only mentions greyhounds, ſetting dogs, and lurchers; and this being a penal law, ſhall not be extended by equity. And of this opinion was the court. And judgment was arreſted. *Comyns*, 576.

Any other engines] *T.* 11 *G.* 2. *K.* and *Gardiner*. It was moved to quaſh a conviction, for unlawfully having and keeping a *gun*, being an engine or inſtrument for deſtroying the game. And it was urged, that this is no ſufficient charge within this act, or any other of the laws relating to the game: for it is not ſaid that the defendant *uſed* the gun for the deſtruction of game; and a gun is not an inſtrument ſo far appropriated to killing game, as that it is criminal for a perſon to have one in his cuſtody only: And it would have been altogether as well, if it had been ſaid that the defendant had in his cuſtody, a *cane* for the deſtruction of the game, which may poſſibly be uſed for that purpoſe. The only offences intended to be prevented by the act are, the keping of engines appropriated to, and which can only be uſed in, the deſtroying of game. A gun is an engine, not for killing the game, but for the defence of a man's houſe. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the ſtatute is to be conſtrued ſo largely, as to extend to the bare having of any inſtrument that may poſſibly be uſed in deſtroying game, it will be attended with very great inconvenience; there being ſcarce any, though ever ſo uſeful, but what may be applied to that purpoſe. And though a gun may be uſed in deſtroying game, and when it is ſo, doth then fall within the words of the act; yet as it is an inſtrument proper, and frequently neceſſary to be kept and uſed for other purpoſes, as the killing of noxious vermin, and the like,

it

it is not the having a gun, without applying it in the deſtruction of game, that is prohibited by the act: but otherwiſe it is of lurchers, harepipes, and ſuch like, which are peculiarly fitted or diſpoſed for killing game. The bare *keeping* of theſe for the purpoſe of killing game, is ſufficient to convict an offender, and it will be incumbent upon the defendant himſelf to prove, that he kept them for other purpoſes. And the conviction therefore was quaſhed. After which, *Strange* ſolicitor general ſaid, that in the caſe of *K.* and *King*, *E.* 3 *G.* Lord *Macclesfield* ſaid, that he was in the houſe of commons when this act was made, and he himſelf objected to the inſerting of the word *gun* therein, becauſe it might be attended with great inconvenience. *Andr.* 255. 2. *Seſſ. C.* 204. *Str.* 1098.

And ſhall be thereof convicted] *H.* 6 *G. K.* and *Johnſon.* Conviction for keeping a gun, not being qualified. Exception was taken, that here was not a reaſonable *ſummons*; for it was made on the fifth of *October*, to appear the ſame day, which might be impoſſible upon account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning; then it is to appear *at the pariſh aforeſaid*, whereas there are two pariſhes mentioned before; ſo the man may have gone to one, whilſt they were convicting him at the other. It was anſwered, that the defendant appeared at the time and made defence, ſo that cures all defects in the ſummons. And by the court, The anſwer is right. *Str.* 261.

H. 5 *G.* 2. *K.* and *Heber.* On a rule to ſhew cauſe, why an information ſhould not be granted againſt the defendant Mr. *Heber*, a juſtice of the peace, for convicting two perſons, *Hargrave* and *Lancaſter*, for killing game not being qualified; the complaint in relation to *Hargrave* was, that the defendant ſent his warrant for him, by which he was arreſted, without any previous information upon oath; in relation to *Lancaſter*, the complaint was, that he happening to be preſent at the time *Hargrave* was convicted, the defendant took that opportunity of convicting him alſo, without giving him any previous ſummons, by which he might prepare himſelf for his defence. The court (the chief juſtice being abſent) were very clear, that an information ought to go againſt the defendant for his behaviour in relation to *Lancaſter*, for they ſaid, it was a moſt known rule of common juſtice, that no man ought

to

to be convicted of an offence, till he has previous notice given him of the charge, that he may be prepared to put in his anſwer to it. Accordingly the rule, as to him, was made abſolute. As to *Hargrave*, judge *Probyn* thought, that the rule with reſpect to him alſo ought to be made abſolute. He ſaid, a warrant deprives a man of his liberty; and therefore a ſummons ought only to iſſue, and not a warrant, without an information upon oath. The other two judges did not think this a ſufficient cauſe for granting an information. And therefore the rule, with reſpect to *Hargrave*, was diſcharged. ——In this caſe, the court would not proceed to make a rule to ſhew cauſe, until the convictions were removed thither by certiorari: for, they ſaid, if there was no conviction, there ought to be no information; and if there was a conviction, this ought to appear by the record. 2 *Barnadiſt.* 34. 77. 101.

H. 26 *G.* 3. *K.* v. *Thomas Spencer Crowther.* This was a conviction before a juſtice on 5 *Ann. c.* 14. for uſing a gun. After ſtating the information, which negatived ſpecifically every one of the qualifications in 22 & 23 *C.* 2. *c.* 25. it proceeded to ſtate, that, "On the ſame "14th day of the ſame month of *September* 1785, at the "pariſh of *Sevenoak*, in the county of *Kent*, one credible "witneſs, to wit, *Edward Tye*, came before me the ſaid "juſtice, and by his depoſition taken in writing before "me the ſame juſtice, upon his oath, &c. ſwore, affirmed, "and ſaid, that the aforeſaid *T. S. Crowther*, on the 8th "day of *September* aforeſaid, in the year aforeſaid, at the "pariſh, &c. did keep and uſe a gun, and certain dogs "called ſetting dogs or pointers, to kill and deſtroy the "game; and hunted them over certain grounds, part of "*Black Hall* farm, in the pariſh, &c. and did then and "there ſhoot at and kill one partridge with his ſaid gun, "againſt the form of the ſtatute in ſuch caſe made and "provided. And afterwards, that is to ſay, on the 15th "day of *September* in the year aforeſaid, he the ſaid *T. S.* "*Crowther*, having been duly ſummoned in this behalf, "appeareth before me the juſtice aforeſaid, and is preſent "to make his defence againſt the ſaid charge; and having "heard the ſame, and the aforeſaid depoſition of the ſaid "*Edward Tye* having been read over again to the ſaid *E.* "*Tye* in the preſence and hearing of the ſaid *T. S. Crow-* "*ther*, and the ſaid *E. Tye having again affirmed his ſaid* "*depoſition to be true, in the preſence and hearing of the ſaid* "*T. S. Crowther*, he the ſaid *T. S. Crowther*, is aſked by "me,

" me, the ſaid juſtice, If he can ſay any thing for him-
" ſelf, why he, the ſaid *T. S. Crowther*, ſhould not be con-
" victed of the premiſes above charged upon him in the
" form aforeſaid: Whereupon the ſaid *T. S. Crowther*
" ſaith, that he is not guilty of the ſaid offence, but he
" doth not produce to me any evidence whatſoever, that
" he is in any manner qualified, allowed, or authorized
" by the laws of this realm to have, uſe, or keep for him-
" ſelf, or any other perſon, any gun, ſetting dog, pointer,
" or any other engine, to kill and deſtroy the game of
" this kingdom. And thereupon it manifeſtly appearing
" to me, that the aforeſaid *T. S. Crowther* is guilty of the
" ſaid offence charged upon him in the ſaid information,
" I do therefore hereby convict him of the offence afore-
" ſaid, and do declare and adjudge that he the ſaid *T. S.*
" *Crowther* hath forfeited the ſum of 5l. for the offence
" aforeſaid, &c."——It was moved to quaſh this con-
viction on the two following grounds; 1ſt, That the evi-
dence on which it was founded was not given in the pre-
ſence of the defendant, for on his appearing before the
juſtice, the witneſs only *affirmed* his former depoſition to
be true, and *K.* v. *Vipont* was cited. 2dly, The qualifica-
tions required by 22 & 23 *C.* 2. *c.* 25. were not nega-
tived by the evidence. The evidence was only general,
that what he did was *againſt the form of the ſtatute*, &c. and
K. v. *Jarvis*, and *K.* v. *Wheatman*, were cited.——In
anſwer thereto it was ſaid, That the depoſition of the wit-
neſs having been read over in the defendant's preſence, and
affirmed by him to be true, was the ſame as if he had been
re-ſworn.—That as to the other objection, the information
had negatived every ſeparate qualification, and was ſo
ſtated in the conviction, and there was no occaſion to
prove it by evidence. It was impoſſible to bring evidence
to prove the want of each qualification negatively. If the
information is ſpecific, a general depoſition that he is not
qualified, is ſufficient to put the defendant upon proving
that he was.——By the court. The firſt objection is
good: The witneſs ought to have been re-ſworn in the de-
fendant's preſence. As to the other point, there is no caſe
in which it has been directly decided, that the evidence
ſhould negative every particular qualification. It cannot
be ſo from the nature of the caſe.——Conviction
quaſhed. *Durnf.* and *Eaſt*, 1 V. 125.

T. 27 *G.* 3. *K.* and *Thomſon*. This was a conviction
on 5 *An c.* 14. *ſ.* 4. ſtating, according to the precedent
(L) the information on 8th *Dec.* 1786; the appearance
of

of the defendant on the 9th after being ſummoned, and the plea of *not guilty*, and then proceeding as follows: " nevertheleſs, on the ſaid 9th day of *Dec.* in the year " aforeſaid, at, &c. one credible witneſs, to wit, *Richard* " *Taylor*, of, &c. cometh before me the ſaid juſtice, and " before me the ſame juſtice, upon his oath, &c. ſaith, " that the defendant, on the 7th day of *Dec.* aforeſaid, in " the year aforeſaid, at, &c. [negativing the qualifica- " tions of 22 & 23 *C.* 2. *c.* 25 *ſ.* 3.] *did keep and uſe a* " *gun to kill and deſtroy the game*; and thereupon the ſaid " defendant, &c. before me the ſame juſtice, by the oath " of one credible witneſs aforeſaid, according to the form " of the ſtatute aforeſaid, is convicted, and for his offence " aforeſaid, hath forfeited 5 l. to be diſtributed, &c."— *Cockell* objected, that it did not appear upon the conviction of what the defendant had been convicted: It only ſaid, thereupon the defendant on, &c. before me the ſame juſtice, by the oath of one credible witneſs, according to the form of the ſtatute, is convicted, and for his offence hath forfeited, &c. This is only a concluſion of law, and not an adjudication of the juſtice. There is nothing to connect it with that which precedes it; ſuch as that " he is " convicted of the premiſſes," or " in manner and form " aforeſaid."——But the *court* were clearly of opinion that there was no ground for that objection; but deſired it might be argued again on another objection, which they ſuggeſted to the counſel; whether the evidence was ſufficiently ſet forth, ſo that the court could ſee by what act the defendant had incurred the penalty; for they obſerved, that the act of *keeping a gun* was in itſelf ambiguous, and that it muſt be ſhewn to be *kept for the purpoſe of killing game*, in order to bring the party keeping it within the act; it was not like keeping a greyhound or a ſnare; which could not be kept for any other purpoſe, and which was expreſsly prohibited by the act.——*Wood* now argued againſt the conviction. It is a fatal objection that the evidence, on which the conviction is grounded, is not particularly ſet forth; the evidence which is ſtated is merely a repetition of the information. Only the reſult ariſing from the facts is ſet forth; but every part of the evidence ought to have been ſpecially ſhewn, that the court might have had an opportunity of judging whether the juſtice drew a legal and proper inference from the facts ſworn to, ſo as to bring the defendant within the penalty of the act. The evidence which was given before the juſtice, could not be given in the manner in which it is ſtated in the

conviction, for this evidence is the language of the act of parliament, and even if it was given in this general way, the juſtice ought to have refuſed it.——*Chambre contrà*, did not diſpute the general rule that it was neceſſary to ſtate the evidence particularly in a conviction, but inſiſted that in the preſent caſe, the evidence was ſufficiently ſtated, being expreſsly ſtated, that the defendant *kept and uſed the gun to kill and deſtroy the game*; and that this form of conviction has been almoſt univerſally uſed on ſimilar occaſions.——*Aſhhurſt* J. If this were a new caſe, I ſhould moſt undoubtedly be of opinion that this conviction could not be ſupported, becauſe I think the evidence ſhould be ſet forth particularly, that we may judge whether the juſtice has convicted upon proper evidence. The fact of keeping or uſing the gun for the purpoſe of deſtroying game ſhould appear; but it is only ſtated here that the defendant kept and uſed, &c. which is the reſult of his evidence. Then whether he kept it for the purpoſe of killing *game* is likewiſe a queſtion of law; for an ignorant witneſs in the country might fancy that a woodcock or a rabbit was game. So that it ſeems to me that permitting this general evidence to be ſtated, is allowing the witneſs to give his ſentiments on the law as well as on the facts. But as the precedents are uſually in this form, and as the conviction in *K.* v. *Hartley* was ſimilar to the preſent, it is better to ſupport this conviction, than by quaſhing it to overturn all former precedents.——*Buller* J. If this precedent had never been adopted, I ſhould have been of opinion that the evidence ſhould have been fully ſet forth: But after ſo many convictions have been made in the ſame form, it would be dangerous to quaſh the preſent. The diſtinction taken in *K.* v. *Filer* is good law; it is not an offence to *keep* or *uſe* a gun, unleſs it be *kept* or *uſed for the purpoſe of killing game*. But it is here ſtated by the evidence, "that "the defendant did keep and uſe a gun to kill and deſtroy "the game." As to the other queſtion reſpecting *game*, I cannot agree that the witneſs in ſwearing that the defendant uſed a gun to deſtroy game, would be ſwearing to a queſtion of law, becauſe it is ſettled by act of parliament, and every man is bound to know what is game: If he ſwears that to be game which is not ſo in law, he would be guilty of perjury. Game muſt be underſtood in its legal caſe.——*Groſe* J. I cannot give my conſent to ſupport this conviction. The juſtice ſhould return particularly all the facts and the concluſion in the conviction; firſt the information, the ſummons, the appearance, or the

defendant's

defendant's default in not appearing, that the information was read to the defendant, that he was aſked what he had to plead, the whole of the evidence particularly, and the adjudication. The witneſs ſhould ſwear to the *facts*, and not to the *law:* and in this caſe it is almoſt incredible that the witneſs ſhould have ſworn in the manner in which this evidence is ſet out: the juſtice ſhould not have received it, if it were offered in this general way, but ſhould have queſtioned the witneſs as to the manner in which this gun was kept, for what purpoſe it was uſed, and what particular kind of game he killed or attempted to kill. All theſe particulars ſhould have been ſpecially ſet forth, in order that we might judge whether they conſtituted an offence within the act. Here the witneſs ſwore to the law, namely, that the defendant *kept and uſed a gun to kill and deſtroy the game.* I had rather chooſe to decide this caſe according to the *K.* v. *Baker* and *K.* v. *Hartley.* And although this conviction cannot be quaſhed, becauſe my brothers have given their opinions in ſupport of it, yet I did not chooſe that this queſtion ſhould paſs *ſub ſilentio*, eſpecially as this declaration of my opinion may have the effect of inducing juſtices in future to ſtate the whole matter upon the record.

There was another doubt entertained by the court, namely, whether it ſufficiently appeared that the evidence was given in the defendant's preſence? But it was overruled. Conviction affirmed. *Durnf.* and *Eaſt*, 2 V. 18.

T. 39 *G.* 3. *K.* v. *Swallow.* This was a conviction in the ſum of 15l. for three penalties under the game laws. By the record of conviction it appeared, that at *Kelling* in *Norfolk* the informer came before *Z. Girdleſtone* one of the juſtices, *&c.* for *Norfolk*, &c. and ſwore that on three ſeveral days (mentioning them) at the pariſh of *Waybourn* in the ſaid county, the defendant kept and uſed ſteel traps and engines to kill and deſtroy the game, *&c.* That afterwards on a ſubſequent day, the 27th *October*, the defendant having been ſummoned, appeared before the juſtice to make his defence againſt the ſaid charge; and having heard the ſame, was aſked by the ſaid juſtice if he could ſay any thing for himſelf why he ſhould not be convicted, *&c.* that he pleaded not guilty: That on the ſaid 27th *October* at *Holt* in the county aforeſaid, one credible witneſs *J. W.* on his oath ſwore, *&c.* And thereupon the ſaid defendant on the ſaid 27th *October*, &c. at *Holt* aforeſaid, before me the ſaid juſtice by the oath, *&c.* is convicted,

convicted, and for his ſeveral offences aforeſaid, hath forfeited the ſum of 5l. for each offence, making together the ſum of 15l. to be diſtributed as the ſtatute directs.—— Several objections were taken to this conviction. Firſt, it does not appear on the conviction at what place the defendant was ſummoned to appear, nor at what place he did appear. Secondly, it does not appear that the evidence was given in the preſence of the defendant; on the contrary, the fair inference from the whole of what is ſtated in the conviction is that the defendant appeared at *Kelling* according to the ſummons; and that then an adjournment of the meeting to *Holt* took place, which excludes the preſumption of the evidence having been there given in his preſence. Thirdly, the defendant is charged with three offences, and the conviction is general without ſaying of how many. Perhaps it may be doubted whether a defendant can be convicted in more than one penalty in the ſame conviction; but at all events the adjudication ſhould diſtinctly ſhew the number of penalties in which he is convicted.——The *court* ſtopping the counſel on the other ſide, L. *Kenyon* Ch. J. ſaid, As to the firſt objection, it will be underſtood that the ſummons to appear and the appearance were at *Kelling* the place before mentioned. Secondly, There would I think be great weight in this objection if it had not been already overruled in former caſes; and notwithſtanding the introduction of another place (*Holt*) I think that this caſe muſt be governed by thoſe. Thirdly, There is no objection to the conviction on the ground that the defendant has been convicted of ſeveral penalties. It is the conſtant practice in actions on the game laws, and not unfrequent in convictions. Even in indictments for capital offences, ſeveral offences are ſometimes charged, as burglary and ſtealing in the dwelling houſe to the value of 40s. I by no means wiſh that magiſtrates in drawing up convictions ſhould ſet all forms at nought; but they ought not to be entangled in greater forms and ceremonies than the ſuperior courts. The word "convicted" in this caſe applies to the ſeveral offences with which the defendant was charged and to the evidence given in ſupport of them; and the following words are "and for his ſeveral offences *aforeſaid*, &c." Taking the whole of the adjudication together, it is evident that the magiſtrate convicted the defendant in the three ſeveral offences charged. Conviction affirmed. *Durnf.* and *Eaſt*, 8 V. 284.

On

On the oath of one credible witneſs] *H.* 9 *G. K.* and *Gage.* The defendant was convicted for uſing a greyhound in killing hares. Exception was taken to the conviction, that the ſtatute had only given the juſtices juriſdiction to convict upon the oath of one or more credible witneſſes, whereas this was upon his own confeſſion, which it was inſiſted the juſtices had no power to take. But by the court: The conviction muſt be confirmed. The intent of mentioning the oath of one witneſs, was only to direct the juſtices, that they ſhould not convict on leſs evidence; ſuppoſe the confeſſion had not been before the juſtices, but before two witneſſes who had ſworn it; that would be convicting him on the oaths of witneſſes; and yet the evidence would not be ſo ſtrong as this. Here the juſtices had a better evidence than the oath of any ſingle witneſs; and it is a monſtrous thing to ſay, that a better ſort of evidence ſhall not do. *Str.* 546.

Credible witneſs] *M.* 2 *G.* 2. *K.* and *Stone.* A conviction was quaſhed, becauſe the informer was the witneſs, divers convictions having been quaſhed for the ſame reaſon before. L. *Raym.* 1545. The ſame adjudged in the caſe of *K.* and *Blaney*, *T.* 11 *G.* 2. *Andr.* 240. And in the ſtatute of the 2 *G.* 3. *c.* 19. it is recited, that in proſecutions on the act of 8 *G. c.* 19. in the courts at *Weſtminſter*, where a part of the penalty is given to the poor of the pariſh, the *inhabitants* of ſuch pariſh had been diſallowed to give evidence; and therefore in that caſe, to remedy the ſame, the act gives the whole penalty to the proſecutor, in order to enable the inhabitants to give evidence.

Before one juſtice] *H.* 12 *G. K.* and *Buck.* It was moved to quaſh an *indictment* for killing a hare, this not being a matter indictable, the ſtatute appointing a ſummary proceeding before juſtices of the peace; and a caſe was cited *K.* and *James*, *T.* 1 *G.* where an indictment for keeping an alehouſe was quaſhed, becauſe the ſtatute of the 3 *C. c.* 3. had directed a particular remedy. And by the court: The indictment muſt be quaſhed. *Str.* 679.

Shall forfeit 5*l.*] *T.* 10 *An. Q.* and *Matthews.* On a conviction, exception was taken, that the perſon was charged with ſo many 5*l.* as he had killed hares in the ſame day. And the court was of opinion that the offence for which the ſtatute gave the forfeiture, was the keeping

dogs and engines, and not killing the hares. If a man not qualified goes a hunting, and kills never ſo many hares on the ſame day, he would forfeit but one 5l. for it is but one offence; but if a man keeps dogs, and goes a hunting ſeveral days, and kills hares, if it was thus laid, that he ſuch a day kept dogs and killed, and then again ſuch a day, by laying it thus ſeverally, the offence is ſevered, and he ſhall forfeit 5l. for each offence. 10 *Mod.* 26.

So in the caſe of *Marriot* and *Shaw*, *E.* 4 *G.* where the defendant was convicted, that upon ſuch a day he kept and uſed a greyhound to kill and deſtroy the game at ſuch a place, that on the ſame day he kept and uſed a greyhound to kill and deſtroy the game at another place, and ſo at a third place, and killed ſeveral hares at the ſaid ſeveral places; it was adjudged by the court, that this being all done on the ſame day, was only one offence; for this ſtatute does not give 5l. for every hare; but only ſays, if any unqualified perſon ſhall keep or uſe any greyhound, or the like, to kill and deſtroy the game, he ſhall forfeit 5l. *Comyns*, 274.

To the poor of the pariſh where the offence was committed] In ſome places a man may ſtand in one pariſh (or county), and ſhoot into two or three: in ſuch caſe, the place where the offence was committed is, where the party ſtood when he ſhot, and not where the object was which he ſhot at. *Show.* 339. *M.* 3 *W.* *K.* and *Alſop.*

By diſtreſs] *T.* 9 *G.* *K.* and *Burchet.* The court ordered an attachment (unleſs cauſe ſhewn) againſt the town clerk of *Guildford*, and a defendant convicted on the game act, for granting and ſuing out a replevin of goods diſtrained for the penalty. But on ſhewing cauſe the next term, when *Eyre* J. only was preſent, he diſcharged the rule, becauſe it was only a contempt to the inferior juriſdiction of the juſtices, and in that caſe the king's bench never interpoſes. *Str.* 567.

But in the caſe of the king againſt the ſheriff of *Leiceſterſhire* and others, *M.* 2 *G.* 2. an attachment was moved for againſt the defendants, for replevying three horſes, which were ſeized as forfeited upon a juſtice's warrant, they being driven in a waggon contrary to act of parliament. The court, tho' they would not grant an attachment, yet made a rule to ſhew cauſe why an information ſhould not go. And on ſhewing cauſe, the court thought there was enough to excuſe the ſheriff; but granted it againſt *Parſons* whoſe

horſes were ſeized, becauſe he knew that the juſtices had granted this warrant; but it did not appear that the ſheriff did. 1 *Barnardiſt.* 110.

And in the caſe of *K.* and *Monkhouſe*, *E.* 16 *G.* 2. The court granted an attachment againſt the under-ſheriff of *Cumberland*, for granting a replevin of goods diſtrained on a conviction for deer-ſtealing. *Str.* 1184.

And ſale] *E.* 13 *G.* 3. *Feltham* and *Tarry.* The defendant levied money by ſeizing and ſelling the plaintiff's goods, on a juſtice's warrant founded on a conviction. Which conviction was afterwards quaſhed. And it was holden, that an action for money had and received then lay for the clear money produced by the ſale of the goods. *Buller's Law of Niſi Prius*, 131.

For want of diſtreſs to be ſent to the houſe of correction] *T.* 12 *G.* *Hill* and *Bateman.* Before *Raymond* Ch. J. at *Weſtminſter.* The defendant *Bateman*, being a juſtice of the peace, had convicted the plaintiff for deſtroying game, and though (as it was proved) the plaintiff had effects of his own, which might have been diſtrained, which were ſufficient to anſwer the penalty he had incurred, yet the defendant ſent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of treſpaſs and falſe impriſonment being brought againſt *Bateman* for this commitment, the chief juſtice was of opinion, that the action well lay. *Str.* 710.

And [*no*] certiorari *ſhall be allowed to remove the conviction or other proceedings on this act, unleſs the party convicted ſhall before the allowance thereof become bound* (O) *to the proſecutor in* 50 l. *with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts and charges in* 14 *days after the conviction* [*confirmed*], *or* procedendo *granted. And in default thereof, the juſtice ſhall proceed in execution of the conviction in ſuch manner as if no* certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

Note; The word [*no*] is inſerted inſtead of the words [*if any*] which are in the act, ſince that word ſeemeth neceſſary to make up the ſenſe; and the word [*confirmed*] is added for the like reaſon. And indeed there have been too many inadvertencies in the drawing up of this act; for there is falſe grammar in no fewer than ſix places, beſides other miſtakes.

Search for game; with 20s. penalty for having it.

And the conſtable, authoriſed by a juſtice's warrant, ſhall enter into and ſearch (in ſuch manner and with ſuch power as in caſe where goods are ſtolen, or ſuſpected to be ſtolen) the houſes, out-houſes, or other places belonging to ſuch houſes of ſuſpected perſons not qualified: And if any hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game, ſhall (upon ſuch ſearch, or otherwiſe) be found, the offender ſhall be carried before a juſtice; and if ſuch perſon do not give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not, in ſome convenient time, to be ſet by the juſtice, produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and upon ſuch conviction ſhall forfeit for every hare, partridge, pheaſant, fiſh, fowl, or other game, any ſum not under 5 s. and not exceeding 20 s. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour. 4 & 5 W. c. 23. ſ. 3.

Or other game] Rabbits killed in a private warren, are not game within this act. L. *Raym.* 151.

For every hare, fiſh, fowl, or other game] Theſe words are very penal.

And if any perſon ſo produced, or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender is diſcovered. Id. ſ. 3.

And no certiorari *ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in* 50l. *with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed, or* procedendo *granted, full coſts and charges; and in default thereof, the juſtice to proceed to the execution of the conviction.* Id. ſ. 7.

Carriers and others ſelling or having game in their poſſeſſion.

If any higler, chapman, carrier, innkeeper, victualler, or alehouſekeeper, ſhall have in his cuſtody or poſſeſſion, or ſhall buy, ſell, or offer to ſell any hare, pheaſant, partridge-moor, heath game, or grouſe, unleſs ſuch game in the hands of ſuch carrier be ſent up by ſome perſon qualified; (or, *if any perſon whatſoever, whether qualified or not, ſhall ſell, expoſe, or offer to ſale any hare, pheaſant, partridge, moor, heath-game, or grouſe,* 28 G. 2. c. 12.) *he ſhall be carried before a juſtice where the offence is committed* (P); *and being convicted thereof*

(*in*

(in three months after the offence) on view, or oath of one witneſs, he ſhall forfeit for every hare, pheaſant, partridge, moor, heath-game, or grouſe, the ſum of 5l. half to the informer, and half to the poor, by diſtreſs (Q): for want of diſtreſs, to be committed (R) to the houſe of correction for the firſt offence three months, and for every other offence four months. 5 An. c. 14. ſ. 2.

And no certiorari ſhall be allowed to remove the conviction or other proceedings, unleſs the party convicted ſhall, before the allowance thereof, become bound to the proſecutor in 50l. with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts in 14 days after the conviction confirmed, or procedendo granted. And in default thereof the juſtice ſhall proceed in execution of the conviction, in ſuch manner as if no certiorari had been awarded. 5 An. c. 14. ſ. 2.

And if any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſhall be found in the ſhop, houſe or poſſeſſion of any poulterer, ſaleſman, fiſhmonger, cook, or paſtry cook, or of any perſon not qualified in his own right to kill game, or entitled thereunto under ſome perſon ſo qualified, it ſhall be deemed an expoſing thereof to ſale. 9 An. c. 25. ſ. 2. 28 G. 2. c. 12.

And any juſtice of the peace, and lord within his manor, may take away any ſuch hare, pheaſant, partridge, moor, heath-game, or grouſe, or any other game, from any ſuch higler, chapman, innkeeper, victualler, or carrier, or any other perſon not qualified, which ſhall be found in his cuſtody or poſſeſſion. 5 An. c. 14. ſ. 4.

And any perſon that ſhall deſtroy, ſell, or buy any hare, pheaſant, moor, heath-game, or grouſe, and ſhall in three months make diſcovery of any higler, chapman, carrier, innkeeper, alehouſekeeper, or victualler, that hath bought or ſold, or offered to buy or ſell, or had in their poſſeſſion any hare, pheaſant, partridge, moor, heath-game or grouſe, ſo as any one ſhall be convicted; ſuch diſcoverer ſhall be diſcharged of the pains and penalties hereby enacted for killing or ſelling ſuch game, and ſhall receive the ſame benefit as any other informer. ſ. 3.

Inferior tradeſmen killing game.

And whereas great miſchiefs do enſue by inferior tradeſmen, apprentices, and other diſſolute perſons, neglecting their trades and employments, who follow hunting, fiſhing, and other game, to the ruin of themſelves and damage of their neighbours, therefore if any ſuch perſon ſhall preſume to hunt, hawk, fiſh, or fowl (unleſs in company with the maſter of ſuch apprentice duly qualified); he ſhall not only be ſubject to the other penalties, but if he be proſecuted for treſpaſs, in coming on any perſon's land,

land, and be found guilty, the plaintiff ſhall not only recover damages againſt him, but full coſts. 4 & 5 *W.* *c.* 23. *ſ.* 10.

T. 30 & 31 *G.* 2. *Buxton* and *Mingay*. In the common pleas. The plaintiff declared, that the defendant being an inferior tradeſman, viz. an apothecary, ſuch a day committed a treſpaſs in hunting in the plaintiff's cloſe. On a trial at the aſſizes, a verdict was found for the plaintiff, with 1s. damages and 40s. coſts; ſubject to the opinion of the court, upon a caſe made, which ſtates, that it was proved at the trial, that the defendant at the time of the treſpaſs was a ſurgeon and an apothecary, and not qualified to kill game; that on ſuch a day he was hunting with divers others not qualified, in company with a perſon who was properly qualified to kill game, and committed a treſpaſs in the plaintiff's cloſe. The queſtion for the conſideration of the court was, Whether upon the facts above ſtated the defendant ſhall be deemed an inferior tradeſman within the meaning of the ſtatute? This caſe was argued ſeveral times at the bar; and the judges were equally divided. For the plaintiff it was argued, that amongſt tradeſmen no line can be drawn with reſpect to who are ſuperior and who are inferior, but they are all upon an equal footing as tradeſmen; but that the line which the legiſlature intended to draw was, between thoſe that were qualified and thoſe that were not: ſo that in this reſpect every tradeſman is inferior who is not qualified. For the defendant it was urged, that every caſe of this kind ought to be determined on its own particular circumſtances, and left to the jury, whether the defendant is an inferior tradeſman or diſſolute perſon within the ſtatute. The court being equally divided, no rule in this caſe was made. 2 *Wilſon*, 70. [Indeed, the word *inferior* ſeems to be applicable rather to the man than to the trade; ſo as that two perſons of the ſame trade may be one a ſuperior and the other an inferior tradeſman.]

Soldiers. By the yearly mutiny acts, if any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, deſtroy any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof, on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5 l. to the poor, and the commanding officer upon the place, for every offence committed by any ſoldier under his command, ſhall forfeit 20 s. in like manner. And if, upon conviction

tion by the juſtices, the demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two days pay the ſaid penalties, he ſhall forfeit his commiſſion.

The ſtatute of 33 *H.* 8. *c.* 6. concerning ſhooting in croſsbows, handguns, hagbuts, or demihakes, although not repealed, ſeemeth now to be obſolete, and ſuperſeded as it were by ſeveral ſubſequent ſtatutes, and a matter more of curioſity than of uſe; therefore it is thought unneceſſary to inſert it here, but to refer the reader to the ſtatute itſelf. The ſtatute of 33 *H.* 8. concerning guns.

IV. Certificate to be taken out.

But by 25 *G.* 3. *c.* 50. Every perſon who ſhall uſe any dog, gun, net, or other engine for the taking or deſtruction of game, (not acting as a gamekeeper,) ſhall previouſly deliver in a paper or account in writing, containing his name and place of abode, to the clerk of the peace of the county where he ſhall reſide, and annually take out a certificate thereof (B) upon which ſhall be charged a ſtamp duty of 2*l.* 2*s.* *ſ.* 2. [And by 31 *G.* 3. *c.* 21. *ſ.* 1. 1*l.* 1*s.* more.] Total 3*l.* 3*s.* Certificate to be taken out.

And every ſuch clerk of the peace, on the delivery of ſuch paper or account as aforeſaid, ſhall thereupon iſſue ſuch certificate ſtamped as before directed, and the ſame ſhall bear date on the day on which it is iſſued, and ſhall continue in force until the 1ſt day of *July* next following the date thereof, and no longer; for which ſuch clerk of the peace, previous to the delivery thereof, ſhall be entitled to 1*s.* for his trouble. And if he ſhall iſſue any certificate otherwiſe than as above ſet forth, or ſhall neglect or refuſe to deliver a certificate properly ſtamped in manner as aforeſaid, he ſhall forfeit 20*l.* and moreover ſhall be liable to pay the duty on ſuch certificate. *ſ.* 5, 6.

And if any perſon ſhall uſe any greyhound, hound, pointer, ſetting dog, ſpaniel, or other dog, or any gun, net, or other engine, for the taking or deſtruction of any hare, pheaſant, partridge, heath-fowl, commonly called *black game*, or grouſe commonly called *red game*, or any other game whatſoever, without having obtained ſuch certificate, he ſhall forfeit 20*l.* *ſ.* 8. On the penalty of 20*l.*

And to prevent the evading the payment of the ſaid duties, and to facilitate the detection of offenders, it is enacted, that if any perſon ſhall be found uſing any dog, gun, net, or other engine, for the taking or deſtruction of game, by any other perſon, who hath obtained ſuch

certificate as aforeſaid, it ſhall be lawful for ſuch perſon producing ſuch certificate, to demand and require from the perſon ſo uſing ſuch dog, gun, net, or other engine, to produce and ſhew a certificate iſſued to him for that purpoſe; and every ſuch perſon ſhall upon ſuch demand produce ſuch certificate to the perſon ſo demanding the ſame, and permit the ſame to be inſpected accordingly: and if any ſuch perſon ſhall wilfully refuſe to produce and ſhew a certificate iſſued to him for that purpoſe, or not having produced and ſhewn ſuch certificate, ſhall refuſe on demand thereof, to give in his chriſtian and ſurname, and the place of his reſidence, or ſhall give in a falſe or fictitious name or place of reſidence, he ſhall forfeit 50l. *ſ.* 15.

Certificates not to authorize killing game at unlawful times, nor by unqualified perſons.

Provided nevertheleſs that ſuch certificate ſhall not authorize any perſon to uſe any greyhound, hound, pointer, ſetting dog, ſpaniel, or other dog, nor any gun, net, or other engine, for the taking or deſtruction of game, at any time, or in any manner prohibited by law, nor ſhall give to any perſon any right to uſe any greyhound, hound, pointer, ſetting dog, ſpaniel, or other dog, nor any gun, net, or other engine for the taking or deſtruction of game, unleſs ſuch perſon ſhall be duly qualified, under and by virtue of the laws now in being, made for the preſervation of the game, but he ſhall remain liable to the penalties in all or any of the ſaid laws contained, in the ſame manner as if this act had not been made. *ſ.* 16.

Liſts of certificates to be tranſmitted annually.

And the clerks of the peace ſhall on or before the firſt day of *Auguſt* in each year, whenever they ſhall be thereunto required by the commiſſioners of the ſtamp duties, make out and tranſmit to the head office of ſtamps, correct liſts in alphabetical order, of the certificates ſo iſſued by them, diſtinguiſhing the duties paid on each reſpective certificate; for which they ſhall have one halfpenny for each name; and in caſe any clerk of the peace ſhall neglect or refuſe to make out ſuch liſt, or ſhall not inſert therein, a full, true, and perfect account, of all the perſons the ſame ought to contain, then and in every ſuch caſe he ſhall forfeit 20l. *ſ.* 11.

Liſts may be inſpected, and to be inſerted in a newſpaper.

And the ſaid liſts ſhall be kept at the ſaid office, and may within the office hours be inſpected by any perſon on payment of 1s.—and the ſaid commiſſioners ſhall once or oftener in every year, as ſoon as conveniently may be after ſuch liſts have been ſo tranſmitted, cauſe the ſame to be inſerted in the newſpapers circulating in each reſpective county, or in ſuch public newſpapers as to them ſhall ſeem moſt proper. *ſ.* 12, 13.

Perſons

Perſons reſiding in cities and towns which are counties of themſelves, and have no clerks of the peace, are to apply to the clerks of the peace of any adjoining county, who are to proceed in the ſame manner as if ſuch perſon reſided in the county of ſuch clerk of the peace. *ſ.* 18. Cities, &c. being counties of themſelves.

All penalties and forfeitures by this act impoſed, may be ſued for and recovered in the courts at *Weſtminſter*, to the uſe of the plaintiff if he ſhall recover the ſame, with coſts of ſuits. But where the penalty doth not exceed 20l. the ſame may be recovered before one juſtice, who is required upon complaint (C) to ſummon the party accuſed (D) and alſo the witneſſes on either ſide, and upon appearance of the party accuſed, or in default thereof, (ſuch ſummons being duly proved,) to proceed to hear and determine the matter in a ſummary way; and upon due proof made thereof, either by the voluntary confeſſion of the party, or by the oath of one witneſs, to give judgment therein (E) and to iſſue his warrant (F) for levying the penalty by diſtreſs (one moiety thereof to go to the perſon who ſhall inform and proſecute for the ſame *within ſix* calendar months after the offence is committed, and the other moiety to go to the king, after firſt deducting the neceſſary charges of recovering the ſame; but if not ſued for *within* ſix calendar months, the whole ſhall go to the king. (26 *G.* 3. *c.* 82. *ſ.* 2, 3. 7.) And where ſufficient diſtreſs cannot be found, to commit (G) ſuch offender to the common gaol, or houſe of correction, (for three calendar months, 26 *G.* 3. *c.* 82. *ſ.* 7.) unleſs ſuch penalty ſhall be ſooner paid. 25 *G.* 3. *c.* 50. *ſ.* 21. Penalties how to be recovered.

And any perſon who ſhall find himſelf aggrieved, may upon giving ſecurity to the amount of ſuch penalty, together with ſuch coſts as ſhall be awarded, in caſe ſuch judgment ſhall be affirmed, appeal to the next ſeſſions, who are to hear and finally determine the ſame; and in caſe the judgment of ſuch juſtice ſhall be affirmed, they may award ſuch coſts as to them ſhall ſeem meet. *ſ.* 21, 22. Appeal.

Witneſſes who ſhall not appear after having been duly ſummoned, without a reaſonable excuſe to be allowed by ſuch juſtice, ſhall forfeit 10l. to be recovered in like manner as aforeſaid. *ſ.* 25. Witneſſes.

Provided nevertheleſs, that ſuch juſtice may where he ſhall ſee cauſe mitigate any ſuch penalties, as he ſhall think fit, not exceeding one moiety thereof, over and above the coſts and charges; and no ſuch conviction ſhall Penalties may be mitigated.

be

be removeable by *certiorari* into any court whatſoever. *ſ.* 25.

V. Concerning gamekeepers.

Who may appoint a gamekeeper.

All lords of manors, or other royalties, not under the degreee of an eſquire, may by writing under their hands and ſeals (A) authorize one or more gamekeeper or gamekeepers, within their reſpective manors or royalties. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

Not under the degree of an eſquire] In the caſe of *Jones* v. *Smart* (*a*), *Willes* J. ſaid, That the lord of a manor is certainly not an eſquire by virtue of his manor or royalty, tho' in common acceptation he is conſidered as ſuch; and that no lord of a manor under that rank, can appoint a gamekeeper, whatever his eſtate may be. *Durnf.* and *Eaſt*, 1 V. 44.

And in the caſe of *Calcroft* v. *Gibbs*, *M.* 33 *G.* 3. L. *Kenyon* Ch. J. ſaid, That the lord of a manor cannot convey to another the power of appointing a gamekeeper, without a conveyance alſo of the manor itſelf. Such a power is a mere emanation of the manor, and it is inſeparable from it. It is a mere ſhadow, accompanying the ſubſtance. *Durnf.* and *Eaſt*, 5 V. 19.

With power to kill game.

And may impower him thereby, upon their own manors, to kill hare, pheaſant, partridge, or any other game:

But if the gamekeeper ſhall, under colour thereof, kill or take the ſame for the uſe of the lord, and afterwards ſell and diſpoſe thereof without the lord's conſent; and be convicted, on complaint of ſuch lord, and on oath of one witneſs, before one juſtice; he ſhall be committed to the houſe of correction for three months, to be kept to hard labour. 5 *An.* *c.* 14. *ſ.* 4.

One gamekeeper in one manor; and to be entered with the clerk of the peace.

But no lord of the manor ſhall make above one perſon to be gamekeeper within any one manor, with power to kill game. And the name of ſuch perſon ſhall be entered with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof ſhall be granted by the clerk of the peace, on payment of one ſhilling:

(*a*) See this caſe more at large, *ante*, under *head III. Qualification by eſtate or degree, &c.*

And

And if any other gamekeeper, whoſe name is not ſo entered, *who ſhall not be otherwiſe qualified* by the laws of this kingdom to kill game, ſhall kill, ſell, or expoſe to ſale any hare, pheaſant, partridge, moor, heath-game, or grouſe; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit for every offence 5l. half to the informer, and half to the poor, by diſtreſs: for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. 9 *An. c.* 25. *ſ.* 1.

Who ſhall not be otherwiſe qualified] From theſe words it ſeemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entered with the clerk of the peace.

To take out a certificate on ſtamp.

But by 25 *G.* 3. *c.* 50. Every deputation of a gamekeeper ſhall be regiſtered with the clerk of the peace of the county where the manor ſhall lie, and ſuch gamekeeper ſhall take out a certificate thereof (B) annually, upon which there ſhall be charged a ſtamp duty of 10s. 6d. *ſ.* 2. [By 31 *G.* 3. *c.* 21. *ſ.* 1. 10s. 6d. more.] Total 1l. 1s.

And if any gamekeeper, to whom ſuch deputation ſhall be granted, ſhall for 20 days next after the granting thereof, neglect or refuſe to regiſter the ſame, and take out a certificate thereof, as aforeſaid, he ſhall forfeit 20l. *ſ.* 9.

And in caſe of a new deputation of a gamekeeper, the ſame ſhall be regiſtered with the clerk of the peace, and a certificate thereof taken out in manner as aforeſaid; whereupon the former certificate ſhall be void, and the perſon acting under the ſame after notice to him given of ſuch new certificate, ſhall be liable to the penalties preſcribed by this act, in the ſame manner as if no certificate had been granted to him. *ſ.* 14.

Not to extend beyond the manor.

And no ſuch deputation and certificate ſhall authorize any ſuch gamekeeper to take or deſtroy game out of the limits of the manor for which ſuch deputation was given. *ſ.* 17.

To be alſo a ſervant of the lord, or immediately employed for him.

And moreover, by the 3 *G. c.* 11. it is further enacted, that no lord of a manor ſhall make any perſon to be a gamekeeper with power to kill game, unleſs ſuch perſon be qualified by the laws of this realm ſo to do; or unleſs ſuch perſon be truly and properly a ſervant to the ſaid lord; or be immediately employed and appointed to take

and

and kill the game for the ſole uſe of the ſaid lord, and not otherwiſe:

And if any perſon, not being qualified by the laws ſo to do, or not being truly and properly a ſervant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the ſole uſe or immediate benefit of the ſaid lord, ſhall under colour or pretence of any power or authority, deputation or qualification to him granted by any lord of a manor, take and kill any hare, pheaſant, partridge, or other game whatſoever; or ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, guns, tunnels, or any other engine to kill and deſtroy the game; he ſhall forfeit 5 l. in like manner. *ſ.* 1.

Gamekeeper's power to ſearch.

The gamekeeper (ſo authoriſed) may ſearch for dogs and engines, and ſeize the ſame for the uſe of the lord, or deſtroy them. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

But it hath been adjudged, that an authority from the lord of the manor is not of itſelf ſufficient for this purpoſe, but that he ought to have a warrant from a juſtice of the peace. *Comb.* 183. *Carpenter* and *Adams*. At leaſt it may be ſafe to have ſuch warrant, eſpecially if any houſes are to be entered and ſearched.

For it would give too great a power to the gamekeepers, to leave it in their diſcretion to ſearch what places they ſhall think proper, as alſo to conſtitute them the judges whether ſuch or ſuch a perſon is or is not qualified to kill game. Therefore it is beſt to have a warrant from a juſtice of the peace, after information and oath of the offence firſt made.

Whether he may carry a gun out of the manor.

M. 9 *G.* 3. *Rogers* and *Carter*. The plaintiff *Rogers* brought an action againſt the defendant being a juſtice of the peace, for taking and carrying away the plaintiff's gun. On a verdict for the plaintiff, a new trial was moved for. The caſe was, The plaintiff, being gamekeeper within the manor of *Ringwood*, in beating for game within the ſaid manor, ſprung a covey of partridges, which he ſhot at within the ſaid manor. They took a ſecond flight, and he purſued them out of the manor, but could not find them. As he was returning to the manor of *Ringwood*, he was met by the defendant about three quarters of a mile diſtant from that manor, who aſked him if he had a qualification. The plaintiff anſwered, I have a deputation from the lord of the manor of *Ringwood*. The defendant replied, you are now out of that manor; and demanded his gun, and took it from him. The defendant

ſendant did not ſhoot out of the manor, but was three quarters of a mile out of the manor, with his gun and dog, with an intention to ſhoot at game. By the court: The queſtion is, Whether the juſtice had a right to take the plaintiff's gun from him, whilſt he was ſporting for the purpoſe of killing game in another manor, out of the manor of *Ringwood?* And we are all of opinion, he had not ſuch right. If he had killed game where he was not a gamekeeper, he might have been convicted in the penalty of 5 l. but he was entitled to keep and have dogs, guns, and nets any where, and a gamekeeper's gun cannot be ſeized either in going to or returning from the manor, or in any other place; and if gamekeepers were permitted to ſeize one another's guns, it would create a kind of border war amongſt them. And the rule to ſhew cauſe why there ſhould not be a new trial was diſcharged. 2 *Wilſon*, 387.

VI. Laws for preſerving the four-footed game in particular.

Which ſaid laws ſeem to concern all perſons whatſoever, whether qualified or not.

Now the four-footed game, or the game of beaſts, are of three kinds, *viz.*

1*ſt. Deer.*
2*d. Hares.*
3*d. Conies.*

1*ſt. Of Deer.*

i. Deer ſtealing by ancient ſtatutes.
ii. Deer ſtealing by the 16 G. 3. c. 30.
iii. By the Black *act.*
iv. Deſtroying covert for deer.

i. Deer ſtealing by ancient ſtatutes.

By the 3 *Ed.* 1. *c.* 20. If *treſpaſſers in parks* be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs, and they ſhall have three years' impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof), and

then ſhall find good ſurety that after they ſhall not commit the like treſpaſs: and if they have not whereof to make fine, after three years' impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety, they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit.

Treſpaſſes] This is, when a man either chaſeth in a park, or endeavours to kill ſome of the game thereof. 2 *Inſt.* 199.

In parks] This act, becauſe it is very penal, is to be underſtood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are required: 1. A liberty, either by grant or preſcription: 2. Incloſure, by pale, wall, or hedge: And, 3. Beaſts ſavages of the park. *Id.*

By the 21 *Ed.* 1. *ſt.* 2. intitled *De malefactoribus in parcis*, If any foreſter or parker ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do continue their malice, and diſobeying the king's peace do flee, or defend themſelves with force and arms, although ſuch foreſter, parker, or their aſſiſtants, do kill ſuch offenders, they ſhall not be troubled upon the ſame.

By the 1 *H.* 7. *c.* 7. When information ſhall be made of any unlawful hunting, in any foreſt or park, by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon to be ſuſpected thereof, he may make a warrant to take and arreſt the perſon, and to have him before the maker of the warrant, or any other of the ſaid counſel, or juſtices of the peace; who may by their diſcretion examine him of the ſaid hunting, and of the ſaid doers in that behalf: And if the ſame perſon *wilfully conceal* the ſaid huntings, or any perſon with him defective therein, that then the ſame concealment be, againſt every ſuch perſon ſo concealing felony. But if he then confeſs the truth, and all that he ſhall be examined of and knoweth in that behalf, then the ſaid offences of hunting by him done, ſhall be but treſpaſs fineable at the next general ſeſſions. And if any reſcous or diſobeyſance be made to any perſon having authority to execute the warrant, by any perſon which ſo ſhould be arreſted, ſo that the execution of the warrant thereby be not had, then the ſaid reſcous and diſobeyſance ſhall be felony. And if any perſon ſhall be convict of any ſuch huntings, with painted faces, vizors, or other-

wiſe

wiſe diſguiſed, to the intent they ſhould not be known, or of unlawful hunting in time of night, then the ſame perſon ſo convict to have like punition as he ſhould have if he were convict of felony.

When information ſhall be made] This information muſt ſhew at leaſt juſt cauſe of ſuſpicion; and it muſt be taken in writing, becauſe it is the ground of the warrant. 3 *Inſt. c.* 21.

In any foreſt or park] This doth not extend to a chaſe, nor to any foreſt or park in uſe or reputation, which are not ſo in law. *Id.*

Wilfully conceal] L. *Coke*, who is a lover of the common law, and is jealous of every violation of it, ſeemeth to be out of humour with this act, and calls it an ill-penned law. He obſerves it was the firſt that was made for the making of any hunting felony, againſt that excellent and equal branch of *charta de foreſta*, *nullus de cætera vitam vel membra amittat pro venatione noſtra*; and this, and other old ſtatutes concerning the foreſt, are called the good old laws and cuſtoms, and commanded to be obſerved; and therefore this new act is too ſevere for wild beaſts, whereof there can be no felony at the common law. And therefore the judges (he ſays) have made a favourable conſtruction of it, as is ſet forth in the following notable report:

M. 19 & 20 *El.* in the king's bench. *Gerrard* the queen's attorney general (who was a grave and reverend man) ſaid openly, that it had been reſolved by the judges upon this ſtatute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth *conceal* it, yet this is upon the conſtruction of the whole act no felony. For the firſt clauſe concerning the concealment, and the laſt clauſe concerning the fact itſelf, muſt be coupled or joined by conſtruction together; that is to ſay, If any perſon be convict of ſuch hunting with painted face, or of unlawful hunting in the night, this conviction muſt be upon not guilty pleaded; which the judges expounded to be the concealment intended in the firſt branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counſel or a juſtice of the peace, which may lie in averment, ſo as before it be felony he muſt be convicted of ſuch hunting upon not guilty

guilty pleaded firſt, and after ſuch conviction, then he muſt be indicted again upon the whole matter, that he feloniouſly did conceal it, againſt the form of the ſtatute, and if the offender upon the firſt indictment confeſſeth the indictment, then it is ſuch a judicial confeſſion as this act intendeth, and no felony within this ſtatute.

This, he ſays, he heard the attorney report, and did then obſerve it; which concurring with his opinion, he thought good to publiſh, and the rather becauſe in *Lambard*'s Juſtice, amongſt his precedents of indictments, there is an erroneous precedent (he ſays) of an indictment of felony for the concealment upon the examination before a juſtice of the peace. And upon the whole he thinks it the cleareſt way to make it treſpaſs, and not felony; which the party may do at his pleaſure. 3 *Inſt. c.* 21.

But L. *Hale* ſays, that this ſeems a difficult expoſition; for upon his arraignment for the hunting, he only anſwers to that indictment, and is not examined touching others; and beſides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convict of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how ſhall there be evidence to convict him of the concealment? 1 *H. H.* 659.

By the 1 *J. c.* 27. Every perſon who ſhall *ſell*, or buy to ſell again, any deer, ſhall on conviction at the aſſizes, or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every deer 40s. half to him that will ſue, and half to the poor.

By the 5 *G. c.* 28. If any perſon ſhall enter into any park, paddock, or other incloſed ground where deer are uſually kept, and wilfully wound or kill any red or fallow deer there, without conſent of the owner of the ground, or of the perſon intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein; and ſhall be convicted thereof before the judge of aſſize, upon indictment by verdict or confeſſion,——he ſhall be tranſported for ſeven years.

ii. Deer ſtealing by the 16 G. 3. c. 30.

By the 16 *G.* 3. *c.* 30. (which repeals in whole or in part nine former acts relating to this ſubject) it is enacted as follows:

Penalty of killing or attempting to kill.

If any perſon ſhall courſe or hunt, or ſhall take in any ſlip, nooſe, toyle, or ſnare, or ſhall kill, wound, or deſtroy,

ſtroy, or ſhall ſhoot at, or otherwiſe attempt to kill, wound, or deſtroy, or ſhall carry away any red or fallow deer, in any foreſt, chaſe, purlieu, or antient walk, whether incloſed or not, or in any incloſed park, paddock, wood, or other incloſed ground, where deer are, have been, or ſhall be uſually kept; without the conſent of the owner, or without being otherwiſe duly authoriſed; or ſhall be aiding, abetting, or aſſiſting therein or thereunto: Every perſon ſo offending, by courſing, hunting, ſhooting at, or otherwiſe attempting to kill, wound, or deſtroy, or by aiding therein or thereunto, ſhall forfeit for every ſuch offence the ſum of 20l.; and every perſon ſo offending by killing, wounding, or deſtroying, or by taking in any ſlip, nooſe, toyle, or ſnare, or by carrying away, or by aiding therein reſpectively, ſhall for every deer ſo wounded, killed, deſtroyed, taken, or carried away, forfeit the ſum of 30l. *ſ.* 1.

And if the offender ſhall be a keeper of or intruſted with the cuſtody or care of ſuch deer, he ſhall forfeit double. *Id.*

And if any perſon, after having been convicted of any of the aforeſaid offences, ſhall offend a ſecond time; ſuch ſecond offence, whether it be the ſame as the firſt offence, or be any other of the aforeſaid offences, ſhall be adjudged felony, and the offender, being lawfully convicted upon indictment, ſhall be tranſported to one of his majeſty's plantations in *America* for ſeven years. *Id.*

And if any offender, who hath been convicted under any of the former acts, ſhall again commit any of the aforeſaid offences againſt this act; he ſhall, on proof of ſuch former conviction, be adjudged to have committed a ſecond offence, in like manner as if ſuch former conviction had been made under the proviſions of this act. *ſ.* 2.

And for the more ready conviction of perſons for a ſecond offence, the juſtice before whom he ſhall be convicted for the firſt offence ſhall tranſmit the conviction to the next ſeſſions, to be there filed amongſt the records; and ſuch conviction ſo filed, or a true copy thereof certified and ſubſcribed by the clerk of the peace, ſhall be ſufficient evidence to prove the conviction of ſuch firſt offence. *ſ.* 3.

It ſhall be lawful for one juſtice, on complaint to him made on oath by any credible perſon, that there is reaſon to ſuſpect any perſon of having in his cuſtody or poſſeſſion, or in any dwelling-houſe, out-houſe, yard, garden, or place, any red or fallow deer which ſhall have been unlawfully

Warrant to ſearch.

lawfully killed, or the head, ſkin, or other part thereof, or any ſlip, nooſe, toyle, ſnare, or other engine, for the unlawfully taking of deer,——by his warrant (S) to cauſe ſuch perſon, and ſuch dwelling-houſe, out-houſe, garden, or place to be ſearched; and if any ſuch ſhall be found, to cauſe the ſame, and ſuch perſon ſo having poſſeſſion, or in whoſe dwelling-houſe, out-houſe, garden, or other place, the ſame ſhall be found, to be brought before any juſtice having juriſdiction: And if ſuch perſon ſhall not produce before ſuch juſtice the party of whom he received the ſame, or ſatisfy ſuch juſtice that he came lawfully by ſuch deer, or the head, ſkin, or other part thereof, or had a lawful occaſion for ſuch ſlip, nooſe, toyle, ſnare, or other engine, or did not keep the ſame for any unlawful purpoſe; he ſhall forfeit not exceeding 30 l. nor leſs than 10 l. at the diſcretion of ſuch juſtice. *ſ.* 4.

And if any red or fallow deer ſuſpected to have been unlawfully killed, or the head, ſkin, or other part of ſuch deer, ſhall, on ſearch under a warrant from a juſtice, be found in the poſſeſſion or cuſtody of any perſon, or in any dwelling-houſe, out-houſe, garden, or other place, or ſhall be proved to have been in the poſſeſſion, houſe, out-houſe, garden, or place, of any perſon who may be juſtly ſuſpected to have come diſhoneſtly or unlawfully by the ſame as aforeſaid; and ſuch perſon ſo in poſſeſſion, or the owner or occupier of ſuch dwelling-houſe, out-houſe, garden, or other place, ſhall not, under the proviſions aforeſaid, be liable to conviction; in ſuch caſe, for the diſcovery of the party who actually killed or ſtole ſuch deer, it ſhall be lawful for any juſtice having juriſdiction, as the evidence given and the circumſtances of the caſe ſhall require, to ſummon before him every perſon through whoſe hands ſuch deer, or the head, ſkin, or other part thereof, ſhall appear to have paſſed; and if the perſon from whom ſuch deer, or the head, ſkin, or other part thereof, ſhall appear to have been firſt received, or who having had poſſeſſion thereof, ſhall not give proof to the ſatisfaction of ſuch juſtice, that he came lawfully by the ſame, ſuch perſon ſhall, on every conviction, forfeit not exceeding 30 l. nor leſs than 10 l. *ſ.* 5.

And if it ſhall appear on the oath of one witneſs, that any perſon hath, or hath had, in his poſſeſſion, houſe, out-houſe, garden, or place, any red or fallow deer, or the ſkin, head, or other part thereof, and ſhall be reaſonably ſuſpected to have come diſhoneſtly or unlawfully thereby; every ſuch perſon, and all others through whoſe hands

the

the ſame ſhall appear to have paſſed under the like ſuſpicion, may be proceeded againſt in like manner and form, and on conviction ſhall be ſubject and liable to the ſame penalty, as if ſuch deer, or the head, ſkin, or other part thereof had been found in the poſſeſſion, houſe, out-houſe, garden or place of ſuch perſon, on ſearch made by warrant as aforeſaid. *ſ.* 6.

Setting nets or ſnares.

If any perſon ſhall ſet, lay, or uſe, any net, wire, ſlip, nooſe, toyle, or other engine, for the purpoſe of taking or killing deer, within or upon any foreſt, chaſe, purlieu, or ancient walk, or in the ring or outer fence or bank dividing the ſame from the adjoining lands; or in any incloſed park, paddock, wood, or ground, where deer are, have been, or ſhall be uſually kept, (ſuch perſon not being the owner of ſuch foreſt, chaſe, purlieu, ancient walk, park, paddock, wood, or ground, or intruſted with the care of the deer within the ſame,) and ſhall be convicted of any ſuch offence; he ſhall forfeit for the firſt offence not exceeding 10l. nor leſs than 5l. and for every other offence any ſum not exceeding 20l. nor leſs than 10l. *ſ.* 7.

Pulling down pales or other fences.

If any perſon ſhall wilfully pull down or deſtroy, or cauſe to be wilfully pulled down or deſtroyed, the pale or pales, or any part of the walls, of any foreſt, chaſe, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer ſhall be then kept, without the conſent of the owner or perſon chiefly intruſted with the cuſtody thereof, or being otherwiſe duly authorized; he ſhall be ſubject to the forfeiture hereby inflicted for the firſt offence of killing any deer. *ſ.* 8.

Seizing of dogs, guns, or other engines.

If any perſon, carrying any gun or other fire arms, or any ſword, ſtaff, or other offenſive weapon, ſhall come into any foreſt, chaſe, purlieu, or ancient walk, or into any incloſed park, paddock, wood, or into any other ground where deer are uſually kept, be the ſame incloſed or not incloſed, with an intent unlawfully to ſhoot at, courſe, or hunt, or to take in any ſlip, nooſe, toyle, ſnare, or other engine, or to kill, wound, deſtroy, or to take away, any red or fallow deer; it ſhall be lawful for the ranger or keeper or perſon intruſted with the care of ſuch deer to ſeize and take from ſuch perſon, in and upon ſuch foreſt, chaſe, purlieu, ancient walk, park, paddock, wood, or other ground, for the uſe of the owner thereof reſpectively, all ſuch guns, fire arms, ſlips, nooſes, toyles, ſnares, or other engines, and all dogs there brought for courſing deer, in like manner as the gamekeepers of manors are impowered by law within their reſpective manors, to ſeize and take dogs, nets,

or other engines, in the cuſtody of perſons not qualified by law to keep the ſame. And if any ſuch perſon ſhall there unlawfully beat or wound any ranger or keeper, or his ſervants or aſſiſtants, in the execution of their office, or ſhall attempt to reſcue any perſon in the lawful cuſtody of any ſuch ranger, keeper, ſervant, or aſſiſtant; he ſhall be guilty of felony, and being convicted on indictment ſhall be tranſported to one of his majeſty's plantations in *America* for ſeven years. *ſ.* 9.

Apprehending offenders.

On complaint or information (T) on oath of one witneſs before one juſtice, of any offence againſt this act; ſuch juſtice (except in ſuch caſes only where the juſtice is ſpecially directed previouſly to ſummon the party before him) may by his warrant (U) cauſe the party complained of to be apprehended and brought before him, at ſuch time and place as ſhall be ſpecified in ſuch warrant: And thereupon ſuch juſtice may proceed to hear and determine the matter of ſuch complaint.—And in caſe where it is provided by this act, that the party complained of ſhall be ſummoned to appear; if the party ſo ſummoned ſhall not appear, then on proof of the ſervice of ſuch ſummons, either perſonally, or by leaving the ſame at his dwelling-houſe, lodgings, or other uſual place of abode, it ſhall be lawful for the juſtice to apprehend him by warrant and to proceed as if no previous ſummons had been directed by this act. *ſ.* 10.

And it ſhall be lawful for any keeper or under-keeper, and their ſervants or aſſiſtants, to ſeize and apprehend upon the ſpot any perſon whom they ſhall diſcover in the actual fact of hunting, courſing, killing, wounding, ſhooting at, taking, deſtroying, or carrying away, any red or fallow deer, from any foreſt, chaſe, purlieu, or ancient walk, whether incloſed or not, or in any incloſed park, paddock, wood, or in any other incloſed ground, or attempting ſo to do; or in ſetting or laying any net, wire, ſlip, nooſe, toyle, ſnare, or other engine therein, for the taking, killing, or deſtroying of deer; and to carry ſuch offender before ſome neighbouring juſtice, to be dealt with according to law. *ſ.* 15.

Levying of penalties.

The pecuniary penalties on this act may be recovered before one juſtice, on the oath of one witneſs or confeſſion; half to the king, to be paid for his uſe into the hands of ſuch perſon as the juſtice ſhall direct, and half to the informer. And in caſe of non-payment thereof, with the charges incident to the conviction, immediately upon the conviction, the ſame ſhall be levied by warrant of ſuch juſtice

tice by diſtreſs (W); and for want of ſufficient diſtreſs (X) the offender, except in ſuch caſes where it is otherwiſe provided by this act, ſhall be committed (&) to the common gaol for one whole year, unleſs the ſaid penalty and charges ſhall be ſooner paid. *ſ.* 11.

And if upon conviction he doth not immediately pay the penalty, the juſtice may order him into cuſtody during ſuch time, not exceeding three days, as ſuch juſtice ſhall think proper to allow for return of the warrant of diſtreſs. *ſ.* 12.

Provided, that if it ſhall appear to the ſatisfaction of ſuch juſtice, either by confeſſion of the party or otherwiſe, that he hath not goods or chattels ſufficient whereon to levy the penalty; the juſtice may, without iſſuing any warrant of diſtreſs, commit the party convicted, as if a warrant of diſtreſs had been iſſued, and a *Nulla Bona* returned thereon. *ſ.* 13.

Provided alſo, that if any perſon committed for any firſt offence againſt this act ſhall, before his commitment to priſon, procure ſecurity to be given by two ſufficient ſureties, to the ſatisfaction of ſuch juſtice, for payment of the penalty with the charges incident, within ſix days, incluſive of the day of conviction; the juſtice may accept of ſuch ſecurity, and on non-payment thereof at the time, may cauſe the party and his ſaid ſureties to be apprehended by warrant, and commit them to the common gaol, for ſuch time as the party convicted was liable to have been impriſoned if no ſuch ſecurity had been given, unleſs the penalty *or* * charges ſhall be ſooner paid. *ſ.* 14.

Finally; if an offender for his firſt offence be committed for want of ſufficient diſtreſs, and ſhall, whilſt in gaol, obtain the conſent in writing of the proſecutor, and alſo of the owner, ranger, foreſter, keeper, or other perſon chiefly intruſted with the care of the deer in the foreſt or other place, for his enlargement; the juſtices in ſeſſions may cauſe him to be brought before them, and by their order may direct the gaoler to ſet him at liberty. *ſ.* 16.

If any offender ſhall make diſcovery of any other offender, ſo as he be convicted; he ſhall be diſcharged of

Offender informing.

---

* The word *or* ſeems here to be by miſtake inſerted, inſtead of the word *and*. For as the clauſe now ſtands, it ſeemeth that the parties may be diſmiſſed on payment of the charges only.

all the penalties of this act by him incurred previous to such diſcovery. *ſ.* 17.

Conviction. The conviction ſhall be fairly written on parchment or paper, in the following form of words, or any other form to the like effect:

BE it remembered, that on the ——— day of ——— in the year ——— A. O. was, upon the complaint of A. I. *convicted before ——— of the juſtices of the peace, for ——— in purſuance of an act paſſed in the ſixteenth year of the reign of his majeſty king* George *the third, for ———* (as the caſe ſhall be). *Given under my hand and ſeal, the day and year above written.* ſ. 18.

And the ſame ſhall be certified to the next ſeſſions, to be there filed amongſt the records. *Id.*

Certiorari. No *certiorari* ſhall be allowed to remove any conviction or other proceedings on this act, unleſs the party convicted ſhall, before the allowance of ſuch certiorari, become bound to the proſecutor in 100l. with ſufficient ſureties as the juſtice before whom the offender was convicted [*ſhall approve of* †], with condition to pay to the proſecutor within thirty days after ſuch conviction confirmed, *on* ‡ a procedendo granted, his full coſts and damages to be aſcertained upon his oath; ——and ſhall alſo become bound to the juſtice before whom the conviction was made, with ſuch ſufficient ſureties as the juſtice ſhall approve of, in the penalty of 60l. with condition to proſecute ſuch writ of certiorari with effect, and to pay to the juſtice the forfeiture to be diſtributed as by this act is directed, or to render to the juſtice ſuch perſon convicted, within thirty days after the conviction ſhall be confirmed, or a procedendo granted: And in default thereof, it ſhall be lawful to proceed to levy the penalty, as if no certiorari had been awarded. *ſ.* 19.

And after confirmation of the conviction by any of the ſuperior courts at *Weſtminſter*, and delivering to the juſtice the rule whereby the conviction hath been confirmed, he may proceed againſt the party in the ſame manner as if a procedendo had been granted. *ſ.* 20.

---

† Theſe three words, or ſome ſuch like, are neceſſary to complete the ſenſe: having been omitted probably out of the ſtatute by miſtake.

‡ So the ſtatute: The word *on* ſhould be *or*.

But by a ſubſequent clauſe in the ſaid act, it is enacted, that no conviction ſhall be removed or removeable by certiorari, or any other writ or proceſs whatſoever, into any of his majeſty's courts of record at *Weſtminſter*; any law or ſtatute to the contrary notwithſtanding. *ſ.* 23.

[How far theſe ſeemingly contradictory clauſes are reconcileable, or whether either, or which of them is in force, may afford matter of attentive conſideration.—Indeed, there ſeems to be a fatality attending theſe game laws; ſeveral of the moſt conſiderable of them not having been digeſted with that care and preciſion which may be deemed requiſite, eſpecially in caſes penal. And in the preſent caſe, the rolls have been conſulted; and every one of the miſtakes here ſpecified are to be found in the original roll; otherwiſe ſome of them might have been ſuppoſed to be only errors of the preſs.]

If any perſon ſhall think himſelf aggrieved by the determination of the juſtice, and ſhall not have ſought his remedy by removing the matter by certiorari as aforeſaid, he may appeal to the general or quarter ſeſſions next after the expiration of twenty days from the time of the conviction; giving to the proſecutor ſix days' notice in writing, of his intention of bringing and proſecuting ſuch appeal, and of the matter thereof; and entering into recognizance before a juſtice, with two ſufficient ſureties to be approved by the ſaid juſtice on *conviction* * to appear and try the appeal at ſuch ſeſſions, and to abide by the order or determination of ſuch court, and for payment of ſuch coſts and charges as ſhall be awarded at the ſaid court. And if the conviction ſhall be there affirmed, the appellant ſhall pay to the proſecutor his full coſts, to be aſcertained by order of the ſaid court. *ſ.* 21. Appeal.

Provided, that if any perſon, thinking himſelf aggrieved as aforeſaid, ſhall have paid the penalty, or ſhall be then impriſoned; he may appeal againſt ſuch conviction as aforeſaid, on entering into recognizance by himſelf only without ſurety, conditioned as before mentioned; the ſaid penalty remaining in the hands of ſuch juſtice, or ſuch perſon continuing in priſon in the mean time, and until the merits of the appeal ſhall be determined. *ſ.* 22.

Provided alſo, that no conviction ſhall be ſet aſide by the ſaid ſeſſions for want of form, or for want of ſtating, or through the miſ-ſtating of any facts, circumſtances,

* This word, as it ſeemeth, ſhould be *condition*.

or matter whatſoever, in caſe the facts alledged in the conviction, or on which the ſame ſhall be grounded, ſhall by proved to the ſatisfaction of the court; but the appeal ſhall be decided on the merits of the caſe only. *ſ.* 23.

In what time proſecutions to commence.

Proſecutions on this act ſhall be commenced within twelve calendar months from the time of the offence committed, and not afterwards. *ſ.* 25.

iii. By the Black *act.*

By the 9 *G. c.* 22. (commonly called the *Waltham Black act*, occaſioned by the devaſtations made in *Epping* foreſt near *Waltham*, by perſons in diſguiſe or with their faces blacked) if any perſon or perſons, being armed with ſwords, fire arms, or other offenſive weapons, and having his or their faces blacked, or being otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park, paddock, or grounds incloſed with any wall, pale, or other fence, wherein any deer have been or ſhall be uſually kept, or ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer: or if any perſon or perſons (whether armed and diſguiſed or not) ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of the king's foreſts or chaſes which are or ſhall be incloſed with pales, rails, or other fences; or in any park, paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or ſhall forcibly reſcue any perſon, being lawfully in cuſtody of any officer or other perſon, for any the ſaid offences; or ſhall by gift or promiſe of money, or other reward, procure any to join him or them in any ſuch unlawful act: every perſon ſo offending, being thereof lawfully convicted, (in any county in *England*,) ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

At the *Hertford* aſſizes 1783, *John Davis* was indicted on the black act before *Gould* J. for hunting, killing, and ſtealing a fallow deer in an incloſed park belonging to *Philadelphia Lee* widow. But the judge did not try the priſoner, until he had ſubmitted to the judges the following queſtion, "Whether 9 *G. c.* 22. as far as it reſpects the offences charged in the indictment, unaccompanied by the circumſtance of being *armed and diſguiſed*, is not virtually repealed by 16 *G.* 3. *c.* 30?" (above).—L. *Mansfield* ſaid,

ſaid, that the judges were unanimouſly of opinion that the 16 *G.* 3. *c.* 30. amounted to a repeal of the felony of ſimply killing deer in a park incloſed; as it puniſhes the firſt offence with a forfeiture of 20*l.* and makes the 2d offence felony. *Leach's Cro. Law.* 228.

Concerning the manner of bringing the offender to juſtice, and other particulars relating thereto, it is proper to refer from hence to the title *Black Act*; where theſe offences, together with the other offences in the ſaid act, are treated of more at large.

iv. Deſtroying covert for deer.

By the 28 *G.* 2. *c.* 19. Whereas the burning and deſtroying of goſs, furze, and fern in foreſts and chaſes, doth deſtroy the cover neceſſary for the preſervation of the deer and game there; therefore if any perſon not having a right or legal licence to do the ſame, ſhall ſet fire to, burn, or deſtroy (or be aiding therein,) any goſs, furze, or fern in any foreſt or chaſe, without the conſent of the owner or perſon chiefly intruſted with the cuſtody of ſuch foreſt or chaſe, or of ſome part thereof, and being brought before a juſtice ſhall be thereof convicted by confeſſion, or oath of one witneſs, or on view of the juſtice, he ſhall forfeit not exceeding 5 l. nor leſs than 40 s. half to the informer, and half to the poor; if not forthwith paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be found the juſtice ſhall commit him to the common gaol, for any time not exceeding three months, nor leſs than one month.

2d. Of hares.

It is to be remembered, that I have already, under the third part of this title, treated of thoſe particulars, which are common to this with other ſpecies of the game, as to deſtroying the ſame by unqualified perſons; I here take notice of ſuch things as belong to hares only, and which for the moſt part ſeem generally to concern all perſons, whether qualified or not.

Tracing in the ſnow.

No perſon, of what eſtate, degree, or condion he be, ſhall trace, deſtroy, and kill any hare in the ſnow, with any dog, bitch, bow, nor otherwiſe. And the ſeſſions or leet may inquire thereof; and after inquiſition found, they ſhall for every hare ſo killed, ceſs upon every offender 6 s. 8 d. to be forfeited to the king, if in the ſeſſions;

ſions; and to the lord of the leet, if in the leet. 14 & 15 *H.* 8. *c.* 10.

And by the 1 *J. c.* 27. Every perſon who ſhall trace or courſe any hares in the ſnow, ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs he pay to the churchwardens for the uſe of the poor, 20 s. for every hare; or after one month after his commitment become bound by recognizance with two ſureties in 20 l. a-piece, before two juſtices, not to offend again in like manner. *ſ.* 2.

Snares and harepipes.

And by the ſaid laſt-mentioned act, every perſon who ſhall at any time take or deſtroy any hares, with harepipes, cords, or any ſuch inſtruments or other engines; ſhall forfeit for every hare 20 s. in like manner. 1 *J. c.* 27. *ſ.* 2.

And by the 22 & 23 *C.* 2. *c.* 25. *ſ.* 6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares, harepipes, or other like engines, and ſhall be thereof convicted, by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; he ſhall give to the party injured ſuch damages, and in ſuch time, as the juſtice ſhall appoint, and ſhall pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10 s. as the juſtice ſhall appoint; which, if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month.

Killing hares in the night, or on Sunday, or Chriſtmas-day.

By the 9 *An. c.* 25. If any perſon whatſoever ſhall take or kill any hare in the night time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5 l. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. *ſ.* 3.

And by the 13 *G.* 3. *c.* 80. If any perſon ſhall knowingly and willfully kill, take, or deſtroy, or uſe any gun, dog, ſnare, net, or other engine, with intent to kill, take, or deſtroy, any hare in the night, that is to ſay, between the hours of 7 at night and 6 in the morning from the 12th day of *Oct.* to the 12th day of *Feb.* and between the hours of 9 at night and 4 in the morning from the 12th day of *Feb.* to the 12th day of *Oct.* or in the day time, upon a *Sunday* or *Chriſtmas day*; he ſhall on conviction on oath of one witneſs before one juſtice, forfeit for the firſt offence not exceeding 20 l. nor leſs than 10 l. and for the ſecond offence not exceeding

ceeding 30l. nor leſs than 20l. And the juſtice ſhall cauſe the conviction to be made out in the manner and form following: *Be it remembered, That on the ——— day of ——— in the year of our Lord ———* A. B. *is convicted before me ——— one of his majeſty's juſtices of the peace of the county of ———* (ſpecifying the offence, with the time and place where the ſame was committed, and alſo ſpecifying that it was the firſt or ſecond offence againſt this act, as the caſe ſhall be). *Given under my hand and ſeal the day and year aforeſaid.* Which conviction the ſaid juſtice ſhall cauſe to be fairly written on parchment, and returned to the next ſeſſions to be filed by the clerk of the peace; who ſhall upon application to him made, deliver copies thereof on payment of 1s. for each copy. *ſ.* 1, 2, 3. Conviction.

But in caſe any information ſhall be made upon oath as aforeſaid before a juſtice againſt an offender, and it ſhall appear that ſuch offender hath already been convicted of a firſt and ſecond offence; in ſuch caſe the juſtice ſhall commit him to the common gaol or houſe of correction till the next general quarter ſeſſions, unleſs he ſhall have entered into recognizance with two ſufficient ſureties to appear at ſuch ſeſſions, then and there to be tried by indictment for the ſaid offence; and ſuch juſtice ſhall alſo bind over the informer to proſecute the ſaid offender by indictment as aforeſaid; and if upon ſuch indictment, the offender ſhall be convicted; he ſhall forfeit and pay in court the ſum of 50l.; and if he ſhall neglect or refuſe to pay the ſame, he ſhall be committed to the common gaol or houſe of corection for not leſs than 6 nor more than 12 calendar months, unleſs ſuch penalty ſhall be ſooner paid; and the ſaid offender ſhall, if the juſtices think proper, be once publickly whipped at the expiration of ſuch commitment, in the town or place where ſuch gaol or houſe of correction ſhall be, between the hours of twelve and one in the day. *ſ.* 1.

Provided, that no proceeding ſhall be upon this act, unleſs information on oath be made before a juſtice, within one calendar month after the offence committed. *ſ.* 9.

The ſaid forfeitures for the firſt and ſecond offence, and alſo for the third offence on conviction at the ſeſſions, together with the coſts and charges previous to and attending ſuch conviction (to be aſcertained by the juſtice or juſtices before whom the offender ſhall be convicted), ſhall be forthwith paid, half to the informer and half to the poor. And if ſuch perſon ſhall refuſe or neglect to

pay

pay the ſame, or to give ſecurity for the payment thereof, ſuch juſtice or juſtices ſhall by their warrant cauſe the ſame to be levied by diſtreſs: And the ſaid juſtice or juſtices may order ſuch offender to be detained in ſafe cuſtody, until return may conveniently be had to the warrant of diſtreſs, unleſs the party ſhall give ſufficient ſecurity, by recognizance or otherwiſe to the ſatisfaction of ſuch juſtice or juſtices, for his appearance before the ſaid juſtice or juſtices on the day appointed for the return of the ſaid warrant, not exceeding 7 days from the taking ſuch ſecurity: And if upon ſuch return, no ſufficient diſtreſs can be had, the ſaid juſtice or juſtices ſhall commit the offender to the common gaol or houſe of correction for 3 calendar months, unleſs the forfeiture ſhall be ſooner paid; or until ſuch offender, thinking himſelf aggrieved by ſuch conviction, ſhall give notice to the informer, that he intends to appeal to the next ſeſſions, and ſhall enter into a recognizance before a juſtice with two ſufficient ſureties, conditioned to try ſuch appeal, and to abide the order of, and pay ſuch coſts as ſhall be awarded by the juſtices at ſuch ſeſſions; which notice ſhall be not leſs than 14 days before the trial of the appeal. And the juſtices at ſuch ſeſſions, on proof of ſuch notice and recognizance, ſhall determine the appeal in a ſummary way, and award coſts to either party as they ſhall judge proper. *ſ.* 4.

And if the offender dwells in another county, the juſtice or juſtices before whom the information or indictment was made, may direct their warrant of apprehenſion and diſtreſs to any conſtable where the offence was committed, to be by him carried to a juſtice near reſiding where the offender dwells, to be ſigned by him on the back of the ſaid warrant, upon proof on oath of the handwriting of the juſtice who firſt granted the warrant; which indorſement ſhall be ſufficient authority for the conſtable of the place where he dwells, or where his goods and chattels are, or for the conſtable who brings the warrant to be indorſed, to apprehend and convey the offender before the juſtice who firſt granted the warrant, or any other juſtice of that county where the offence was committed, or for ſuch conſtable to levy the penalty by diſtreſs; and alſo, in caſe where no ſufficient diſtreſs can be had, to convey the offender before the juſtice who firſt granted the warrant of diſtreſs, or any other juſtice of that county where the offence was committed, to be dealt with according to law. And the juſtice who indorſed the

warrant

warrant ſhall direct the conſtable or other perſon making the diſtreſs, to deliver over the money levied to the juſtice who firſt granted the warrant; and if ſuch conſtable or other perſon ſhall neglect or refuſe to pay ſuch ſum, or deliver over all proceedings upon ſuch diſtreſs or warrant of apprehenſion, the juſtice who firſt granted the warrant, or the juſtice who indorſed it, may commit him to the common gaol or houſe of correction for ſix months, or till the money ſhall be paid, and the proceedings delivered over. *ſ.* 7.

And no order made, or any other proceedings upon this act, ſhall be quaſhed for want of form, or removed by certiorari or other writ into any of the courts of record at *Weſtminſter*. *ſ.* 8.

[Note; in reſpect to the third offence, here ſeems to be an inconſiſtency. The former part of the act ſays, if the offender ſhall not, upon conviction by indictment at the ſeſſions, pay in court the penalty of 5ol. he ſhall be committed to the gaol or houſe of correction for not leſs than 6 months nor more than 12.——The latter part of the act ſays, the ſaid penalty ſhall be levied by diſtreſs; and if no diſtreſs can be had, the offender ſhall be committed to the gaol or houſe of correction for *three* months; with power of appealing to the ſeſſions then next following; with other circumſtances ſeemingly abſurd.]

Shooting hares.

Every perſon who ſhall ſhoot at, kill, or deſtroy any hare, with any gun or bow, ſhall on conviction before two juſtices, by confeſſion or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor 20 s. for every hare; or after one month after his commitment become bound by recognizance with two ſureties before two juſtices in 20l. a-piece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

E. 37 *G.* 3. *K.* v. *Harris.* This was a conviction on the above ſtatute 1 *J. c.* 27. for killing 2 hares with a gun. The conviction, after ſetting forth the information, ſummons, plea, and the evidence, concluded thus: "Whereupon all and ſingular the premiſes being ſeen and fully underſtood, &c. it appears to us the ſaid juſtices, that the ſaid *I. A. Harris* is guilty of the offence charged

upon him in and by the ſaid information, &c. according to the form of the ſtatute in ſuch caſe made and provided." ——*Erſkine*, on the behalf of the defendant, propoſed to take ſeveral objections to this conviction: 1ſt, That the above ſtatute of *J. c.* 27. was in this reſpect virtually repealed by 22 & 23 *C.* 2. *c.* 25.——On a queſtion being then put by the court, Whether the conviction was not informal for want of an adjudication?——L. *Kenyon* Ch. J. ſaid, without agitating the queſtion reſpecting the repeal of the ſtatute of *James*, which need not be diſcuſſed in this caſe, I am of opinion, that the conviction cannot be ſupported for want of an adjudication, therefore, without conſidering the other point concerning the virtual repeal of the ſtatute of *James*, which I deſire to leave untouched, I am clearly of opinion this conviction cannot be ſupported.——Conviction quaſhed. *Durnf.* and *Eaſt*, 7 V. 238.

Buying and ſelling hares.

Every perſon who ſhall ſell, or buy to ſell again, any hare, ſhall, on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every hare 10s., half to the poor, and half to him that will ſue. 1 *J. c.* 27. *ſ.* 4.

Taking hares in warrens.

By the Black Act before-mentioned, if any perſon, armed and diſguiſed, ſhall appear in any warren or place where hares are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for either of the ſaid offences, or procure any to join with him in any ſuch unlawful act; he ſhall be guilty of felony without benefit of clergy.

3*d. Conies.*

Treſpaſſers in warrens may be reſiſted.

If any warrener ſhall find any treſpaſſers wandering within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do flee, or defend themſelves; although the warrener or his aſſiſtant do kill ſuch offenders, they ſhall not be troubled upon the ſame. 21 *Ed.* 1. *ſt.* 2.

Hunting in a warren by night or diſguiſed.

When information ſhall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon ſuſpected, he may make a warrant to bring ſuch perſon before himſelf or any other of the ſaid counſel or juſtices; and if ſuch perſon ſhall conceal the ſaid hunting

or

or any of his accomplices, it ſhall be felony; but if he confeſſeth, it ſhall be but treſpaſs finable at the ſeſſions. 1 *H.* 7. *c.* 7.

Hunting by night in a warren incloſed.

If any perſon ſhall in the night time enter into any grounds incloſed, and uſed for keeping of conies, and hunt, drive out, take, or kill any conies; he ſhall, on conviction at the ſuit of the king or of the party, at the aſſizes or ſeſſions, on indictment, bill, or information, or otherwiſe, be impriſoned 3 months, and pay to the party grieved treble damages and coſts, and find ſureties for his good abearing for ſeven years, or continue in priſon till he does: But this ſhall not extend to any grounds to be incloſed and uſed for conies after the making of this act, without the king's licence. 3 *J.* *c.* 13.

Killing in places incloſed or unincloſed, by night or day.

If any perſon ſhall at any time enter wrongfully into any warren or ground lawfully uſed or kept for the breeding or keeping of conies, whether it be incloſed or not; and there ſhall chaſe, take, or kill any conies; and ſhall be thereof convicted in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs; he ſhall yield to the party grieved treble damages and coſts, and be impriſoned 3 months, and after till he find ſureties for his good abearing. 22 & 23 *C.* 2. *c.* 25. *ſ.* 4.

If by night, further penalty of tranſportation.

If any perſon ſhall wilfully and wrongfully, in the night time, enter into any warren or grounds lawfully uſed or kept for the breeding or keeping of conies, altho' the ſame be not incloſed, and ſhall then and there wilfully and wrongfully take or kill, in the night time, any coney againſt the will of the owner or occupier thereof; or ſhall be aiding and aſſiſting therein; and ſhall be convicted thereof at the aſſizes; he ſhall be tranſported for ſeven years, or ſuffer ſuch other leſſer puniſhment, by whipping, fine, or impriſonment, as the court ſhall award. Provided, that conies may be taken, in the day time, on the ſea, or river banks in the county of *Lincoln*, ſo far as the tide ſhall extend, or within one furlong of the ſaid banks; and the perſon taking them ſhall not be obliged to make ſatisfaction for damage, unleſs the ſame ſhall exceed the ſum of 1s. 5 *G.* 3. *c.* 14. *ſ.* 6, 7, 8, 9.

Felony without benefit of clergy.

By the Black Act abovementioned, If any perſon, being armed and diſguiſed, ſhall appear in any warren or place where conies are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for ſuch offence,

or

or procure any perſon to join him therein; he ſhall be guilty of felony without benefit of clergy.

Killing in the night, in the borders of warrens.

No perſon ſhall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully uſed for the breeding or keeping of conies (except the owner or poſſeſſor of the ground, or perſons employed by them); on pain that the offender, on conviction in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs, ſhall give to the party injured ſuch damages and in ſuch time as ſhall be appointed by the juſtice, and over and above pay down preſently to the overſeers for the uſe of the poor ſuch ſum not exceeding 10s. as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction for ſuch time as he ſhall think fit, not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 5.

The ſtatute ſaith, *upon the borders of warrens*; but if they are out of the warren, no perſon hath any property in them, and a man may juſtify killing them if they eat up his corn; but no action lies againſt the owner of the warren. 5 *Co.* 104. *Read.* Game.

So a perſon that hath a right of common may kill them, when they are out of the warren, and deſtroy the common; but he cannot have an action on the caſe againſt the lord, for that would be to create a multiplicity of actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

For a man cannot have an action for another man's conies breaking into his ground, becauſe they are no longer the other's than while they are in the warren or place where he hath a right to keep them; ſo that no violation hereby ariſes to the property of one man by the beaſts of another; but the conies, being in their natural liberty, may be lawfully killed by the owner of the ſoil. 2 *Bac. Abr.* 614.

But if the lord hath a right to put conies upon the common, and by an exceſs in the number ſurcharges the common, and by the number of burrows made by the conies prevents the commoner's cattle from depaſturing the common; an action in ſuch caſe is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nuſance. As in the caſe of *Cooper* v. *Marſhall*, *E.* 30 *G.* 2. By L. *Mansfield* Ch. J. The queſtion in this caſe is not, whether the act of the lord be or be not hurtful, or how far it may be ſo: but the

the queſtion turns upon the remedy, whether it is abateable, whether the commoner can do himſelf juſtice? It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abateable. The lord, by his grant of common, gives every thing incident to the enjoyment of it, as ingreſs, egreſs, and the like: and thereby authorizes the commoner to remove every obſtruction to his cattle's grazing the graſs which grows upon ſuch a ſpot of ground: becauſe every ſuch obſtruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoner's cattle out, is inconſiſtent with a grant which gives them a right to come in. But the lord ſtill remains owner of the ſoil; and is not debarred from exerciſing any act of ownerſhip. The commoner has no right to meddle with the ſoil. In the preſent caſe, the lord has done nothing contrary to the grant. He hath not obſtructed the commoner from entring and putting in his cattle. The lord has a right to put conies upon the common. The conies themſelves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord ſurcharges, the commoner is injured in his right of common, it is true: But what is the commoner's remedy? Not to abate; not to be his own judge, in a complicated queſtion, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right ſo far, but no farther. Yet the commoner cannot deſtroy or drive off the conies; nor, conſequently, can he deſtroy the burrows, which is in effect deſtroying the conies.——By Mr. J. *Deniſon:* Upon the record of this caſe, it muſt be taken, that the plaintiff was owner of the ſoil, and had a free warren; and that there is not ſufficient common left, by the increaſe of the conies, for the uſe of the commoner. The queſtion then is, Whether the commoner ſhall be intruſted to deſtroy the eſtate of the lord, in order to preſerve his own right of common. This would be to conſtitute himſelf judge in his own cauſe: No, let him take his proper remedy. A coney-burrow is not of its own nature a nuſance: On the contrary, it is eſſential to a free warren. Therefore the nuſance depends upon the number of them: And you can, at the utmoſt, only abate ſo much of the thing as is a nuſance. You cannot deſtroy the whole (which is the right here claimed); but only ſo much of the thing as makes it a nuſance.——By Mr. J. *Foſter:* This juſtification is clearly bad. It is founded on

a claim of right which cannot be maintained. It is admitted, that a commoner cannot in this caſe deſtroy the conies. Conſequently, he cannot deſtroy the burrows; for the effect is, deſtroying the conies. If the lord has exceeded the bounds of his right, the law is to determine the quantum of ſuch exceſs; and to the law the commoner muſt reſort for his remedy, if he is aggrieved. *Burr. Mansf.* 252.

Setting ſnares. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares or other like engines, for taking of conies, and ſhall be thereof in like manner convicted, he ſhall give to the party grieved ſuch damages, and in ſuch time as the juſtice ſhall appoint, and pay down preſently to the overſeer for the uſe of the poor ſuch ſum not exceeding 10 s. as the juſtice ſhall appoint; which, if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 6.

Appeal. Perſons aggrieved by any judgment given by virtue of this act, may appeal to the next ſeſſions, whoſe order therein ſhall be final, if no title to any land or royalty be therein concerned. *ſ.* 9.

Keeping engines. If any perſons not having lands or hereditaments of 40*l.* a-year, or not worth in goods 200*l.* ſhall uſe any gun or bow to kill conies, or ſhall keep any ferrets or coney-dogs (except he have grounds incloſed for keeping of conies, the increaſing of which ſhall amount to 40 s. a-year to be let, and except warreners in their warrens); in ſuch caſe, any perſon having 100*l.* a-year may ſeize the ſame to his own uſe. 3 *J. c.* 13. *ſ.* 5.

VII. Laws concerning the winged game in particular.

1*ſt.* *Of hawks and hawking.*
2*d.* *Of ſwans.*
3*d.* *Of partridges and pheaſants.*
4*th.* *Of pigeons.*
5*th.* *Of wild ducks, wild geeſe, and other water-fowl.*
6*th.* *Of heath-fowl, grouſe, and buſtards.*
7*th.* *Of herons.*
8*th.* *Of other fowl.*

1*ſt.* *Of*

1*ſt*. *Of hawks and hawking*.

No man ſhall bear any hawk of the breed of *England*, called a nyeſſe, goſhawk, taſſel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over ſea, he ſhall bring a certificate thereof from the officer of the port: on the like pain of forfeiting the ſame to the king. And the perſon that bringeth any ſuch hawk to the king, ſhall have a reaſonable reward of the king, or elſe the hawk for his labour. 11 *H*. 7. *c*. 17. What hawks a man ſhall bear.

Every perſon who findeth a faulcon, tercelet, laner or laneret, or other hawk that is loſt, ſhall preſently bring the ſame to the ſheriff; and the ſheriff ſhall make proclamation in all the good towns in the county, that he hath ſuch an hawk in his cuſtody; and if he is challenged in four months, the owner ſhall have him again, paying the coſts; if he is not challenged in four months, the ſheriff ſhall have him, making gree to him that took him, if he be a ſimple man; but if he be a gentleman, and of eſtate to have the hawk, then the ſheriff ſhall re-deliver to him the hawk, taking of him reaſonable coſts for the time that he had him in his cuſtody. 34 *Ed*. 3. *c*. 22. Perſon finding a hawk.

And if any man ſteal any hawk, and the ſame carry away, not doing the ordinance aforeſaid; it ſhall be done of him as of a thief that ſtealeth a horſe or other thing, 37 *Ed*. 3. *c*. 19. That is, he ſhall be guilty of felony, but ſhall have his clergy. 3 *Inſt*. 98. Stealing a hawk.

If any perſon ſhall take away any hawks or their eggs, by any means unlawfully, out of the woods or ground of any perſon; and be thereof convicted at the aſſizes or ſeſſions, on indictment, bill, or information, at the ſuit of the king, or of the party; he ſhall be impriſoned three months, and ſhall pay treble damages; and after the three months expired, ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El*. *c*. 21. *ſ*. 3. Taking hawks or eggs out of the woods.

But by a more ancient ſtatute, no man ſhall take any ayre, faulcon, goſhawk, taſſel, laner, or laneret, in their warren, wood, or other place; nor purpoſely drive them out of their coverts accuſtomed to breed in, to cauſe them to go to other coverts to breed; nor ſlay them for any hurt done by them: on pain of 10 l. half to him that will ſue before the juſtices of the peace, and half to the king. 11 *H*. 7. *c*. 17.

And no manner of perſon, of what condition or degree he be, ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any faulcon, goſhawk, or laner, out of the neſt; on pain (being convicted thereof before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. 11 *H.* 7. *c.* 17.

Hawking in corn.

If any manner of perſon ſhall hawk in another man's corn, after it is eared, and before it is ſhocked; and be convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40*s.* to the owner: And if not paid in ten days, he ſhall be impriſoned for a month. 23 *El. c.* 10.

2*d. Of Swans.*

Qualification to keep ſwans.

No perſon (other than the king's ſon) unleſs he have lands of freeho'd to the value of five marks a-year, ſhall have any mark or game of ſwans; on pain of forfeiting the ſwans, half to the king, and half to any perſon (ſo qualified) who ſhall ſeize the ſame. 22 *Ed.* 4. *c.* 6.

Stealing ſwans marked.

It is felony to take any ſwans that be lawfully marked, though they be at large. *Dalt. c.* 156.

Swans unmarked.

And as to ſwans unmarked; if they be domeſtical or tame, that is, kept in a moat, or in a pond near to a dwelling-houſe, to ſteal ſuch is alſo felony. *Id.*

So it ſeemeth of ſwans unmarked, ſo long as they keep within a man's manor, or within his private rivers; or if they happen to eſcape from thence, and be purſued and taken, and brought in again. *Id.*

But if ſwans that are unmarked ſhall be abroad, and ſhall attain to their natural liberty, then the property of them is loſt; and ſo long, felony cannot be committed by taking them. *Id.*

And yet ſuch unmarked and wild ſwans the king's officers may ſeize (being abroad) for the king's uſe, by his prerogative. Alſo the king may grant them, and by conſequence another may preſcribe to have them, within a certain precinct or place. *Id.*

Swans' eggs.

Every perſon who ſhall take the eggs of any ſwan out of the neſt, or willingly ſpoil them in the neſt; and ſhall be convicted thereof before two juſtices, by confeſſion, or oath of two witneſſes; ſhall be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor, 20*s.* for every egg; or after one month

month of his commitment, become bound by recognizance with two ſureties in 20l. a-piece, before two juſtices, never to offend again in like manner; which recognizance ſhall be returned to the next ſeſſions. 1 *Jac. c.* 27. *ſ.* 2.

But by a more ancient ſtatute, no perſon ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any ſwan; on pain (on conviction before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the ſwans. 11 *H.* 7. *c.* 17.

3d. Of partridges and pheaſants.

Partridges and pheaſants are birds of warren, and the law ſeems peculiarly to protect them; as appears by what follows:

Taking them in another man's ground.

By the 11 *H.* 7. *c.* 17. It is enacted, that no perſon, of what condition he be, ſhall take or cauſe to be taken, any pheaſants or partridges by nets, ſnares, or other engines, out of his own warren, upon the freehold of any other perſon, without the ſpecial licence of the owner or poſſeſſioner of the ſame; on pain of 10l. half to him that ſhall ſue, and half to the owner or poſſeſſioner of the ground where they ſhall be taken.

Taking them with dogs, nets, or engines; or their eggs.

Every perſon who ſhall ſhoot at, kill, or deſtroy any pheaſant or partridge, with any gun or bow; or ſhall take, kill, or deſtroy them with ſetting dogs or nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; or ſhall take their eggs out of the neſt, or ſpoil them in the neſt; ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay upon conviction to the churchwardens for the uſe of the poor 20s. for every pheaſant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two ſureties, before two juſtices in 20l. each, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

And by the 7 *J. c.* 11. Every perſon who ſhall take, kill, or deſtroy, any pheaſant or partridge, with ſetting dogs and nets, or otherwiſe with any manner of nets, ſnares, or engines, ſhall on conviction before two juſtices, by confeſſion, or oath of one witneſs, be committed to gaol for three months, unleſs he forthwith pay to the churchwardens or overſeers 20s. for every pheaſant

or partridge; and further to become bound by recognizance of 20l. before one juſtice, that he ſhall not thereafter kill or deſtroy any pheaſant or partridge. The recognizance to be filed at the next ſeſſions.

Selling or buying.

Every perſon who ſhall ſell, or buy to ſell again, any partridge or pheaſant (except they be reared and brought up in houſes, or brought from beyond ſea); ſhall on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every partridge 10s. and for every pheaſant 20s. half to him that will ſue, and half to the poor. 1 *J. c.* 27. *ſ.* 4.

Taking in the night, or on a Sunday or Chriſtmas-day.

By the 33 *El. c.* 10. If any perſon, of what eſtate, degree, or condition ſoever, ſhall take, kill, or deſtroy any pheaſants or partridges in the night time; and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit for every pheaſant 20s. and for every partridge 10s. half to him that ſhall ſue, and half to the lord of the manor, unleſs ſuch lord ſhall licenſe or procure the ſaid taking or killing, in which caſe the ſaid half ſhall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he ſhall be impriſoned for one month: And moreover, beſides ſuch forfeiture and impriſonment, he ſhall give bond to ſome juſtice of the peace, with good ſureties, not to offend again in like manner for the ſpace of two years.

By the 9 *An. c.* 25. If any perſon whatſoever ſhall take or kill any pheaſant or partridge in the night time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5l. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months.

And by the 13 *G.* 3. *c.* 80. If any perſon ſhall knowingly and wilfully kill, take, or deſtroy, or uſe any gun, dog, ſhare, net, or other engine, with intent to kill, take, or deſtroy any pheaſant or partridge in the night, that is, between the hours of 7 at night and 6 in the morning from the 12th day of *Oct.* to the 12th day of *Feb.* and between the hours of 9 at night and 4 in the morning from the 12th day of *Feb* to the 12th day of *Oct.*; or, in the day time, on a *Sunday* or *Chriſtmas-day*; he ſhall forfeit for the firſt offence not exceeding 20l. nor leſs than 10l.; for the ſecond offence not exceeding 30l. nor leſs than 20l.; for the third and every other ſubſequent offence, 50l. To be levied and recovered as the like penalties for killing any hare

in the night, or on a *Sunday* or *Chriſtmas-day*, as is above ſet forth.

Every perſon whatſoever, who ſhall hawk at, deſtroy, or kill, any pheaſant or partridge, with any kind of hawk, or dog, by colour of hawking, between the firſt of *July* and the laſt of *Auguſt*, ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, in ſix months after the offence, be committed to gaol for one month, unleſs he pay upon conviction to the churchwardens or overſeers for the uſe of the poor 40s. for every ſuch hawking at any pheaſant or partridge, and 20s. for every ſuch pheaſant or partridge which he, his hawk, or dog, ſhall take or kill. 7 *J. c.* 11. *ſ.* 2. At what time hawking at them ſhall be prohibited.

Finally, by the 2 *G.* 3. *c.* 19. No perſon ſhall, upon any pretence whatſoever, take, kill, carry, ſell, buy, or have in his poſſeſſion or uſe, any partridge between [1ſt of *Feb.* and 1ſt *Sep.* 39 *G.* 3 *c.* 34.] or any pheaſant between *Feb.* 1, and *Oct.* 1, yearly; on pain of forfeiting, on conviction by one witneſs, in any of the courts of record at *Weſtminſter*, 5l. for every ſuch fowl, with full coſts. But this not to extend to any pheaſant taken in the ſeaſon allowed by this act, and kept in any mew or breeding place. Within what times taking them in any kind ſhall be prohibited.

4th. Of pigeons.

A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382. Who may erect a dove-coat.

And it hath been adjudged, that erecting of a dove-houſe is not a common nuſance, nor preſentable in the leet. *Cro. Jac.* 490, 1. Dove-coat not a nuſance.

By the 1 *J. c.* 27. *ſ.* 2. Every perſon who ſhall ſhoot at, kill, or deſtroy, any houſe-dove or pigeon with any gun or bow; or ſhall take, kill, or deſtroy the ſame with ſetting dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; ſhall, on conviction before two juſtices where the offence ſhall be committed or the offender apprehended, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens, for the uſe of the poor of the pariſh where the offence was committed or the offender apprehended reſpectively, 20s. for every pigeon, or after one month after his commitment become bound by recog- Killing with dogs, nets, or engines.

nizance with two ſureties, before two juſtices, in 20 l. a-piece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions.

And by the 2 *G.* 3. *c.* 29. If any perſon ſhall ſhoot at with an intent to kill or by any means kill or take, with a wilful intent to deſtroy any houſe-dove or pigeon, and ſhall be thereof convicted, by confeſſion or oath of one witneſs, before one juſtice where the offence was committed, or the party apprehended, he ſhall forfeit 20 s. to the proſecutor; and if not forthwith paid, ſuch juſtice may commit him to the goal or houſe of correction, not exceeding 3 kalendar months nor leſs than one, unleſs the forfeiture ſhall be ſooner paid. But this not to extend to the owners of dove-coats, with regard to their own pigeons. And perſons convicted on this act, ſhall not be convicted on any former act: and proſecutions on this act ſhall be commenced and carried on with effect within two months after the offence committed; and perſons impriſoned for default of payment of the penalty, ſhall not be liable afterwards to pay ſuch penalty.

Pigeons treſpaſſing.

But if the pigeons come upon my land, and I kill them; the owner hath no remedy againſt me; tho' I may be liable to the ſtatutes which make it penal to deſtroy them. *Cro. Ja.* 492.

Pigeons to go to the heir.

Doves in a dove-houſe, young and old, ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

5th. Of wild ducks, wild geeſe, and other water fowl.

Shooting water fowl.

Every perſon who ſhall ſhoot at, kill, or deſtroy with any gun or bow, any mallard, duck, teal, or widgeon; and the ſame be proved by confeſſion, or oath of two witneſſes, before two juſtices;—ſhall be committed to gaol for three months, unleſs he pay to the churchwardens for the uſe of the poor, 20 s. for each fowl, or after one month after the commitment become bound by recognizance with two ſureties, before two juſtices, in 20 l. each, not to offend again in like manner: which recognizance ſhall be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Not to be taken in the moulting ſeaſon.

No perſon between the laſt day of *May*, and the laſt day of *Auguſt* yearly, ſhall take, or cauſe to be taken, any wild ducks, mallards, widgeons, teals, or wild geeſe, with nets or other engines; on pain of a year's impriſonment, and to forfeit for every fowl ſo taken 4 d. half to the king, and half to him that will ſue by action of debt: Alſo the juſtices of the peace may inquire of, hear and determine

determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.

Nevertheleſs, any gentleman, or any other that may diſpend 40 s. a-year of freehold, may hunt and take ſuch wild fowl with their ſpaniels only, without uſing a net or other engine except the long bow. *Id.*

But by a ſubſequent ſtatute, if any perſon whatſoever (between *June* 1, and *Oct.* 1, yearly, 10 *G.* 2. *c.* 32.) ſhall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place or reſort for wild fowl in the moulting ſeaſon; and ſhall be convicted thereof before one juſtice by the oath of one witneſs; he ſhall for every ſuch fowl forfeit 5 s. half to the informer, and half to the poor, by diſtreſs, rendring the overplus above the penalty and charges of diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not exceeding one month, nor leſs than 14 days, to be whipt and kept to hard labour. And the nets to be ſeized and deſtroyed in the preſence of the juſtice. 9 *An. c.* 25 *ſ.* 4.

Deſtroying their eggs.

No perſon from *March* 31, to *June* 30, yearly, ſhall take or deſtroy the eggs of any mallard, teal, or other water fowl; on pain of a year's impriſonment, and of forfeiting for every egg one penny, half to the king, and half to him that will ſue by action of debt; or, the juſtices of the peace may determine the ſame as in caſes of treſpaſs. 25 *H.* 8. *c.* 11. *ſ.* 5.

6th. Of heath-fowl, grouſe and buſtards.

Shooting.

Every perſon who ſhall ſhoot at, kill, or deſtroy, with any gun or bow, any grouſe, heath-cock, or moor-game; ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs upon conviction he pay to the church-wardens for the uſe of the poor, 20 s. for each fowl, or after one month after his commitment become bound by recognizance with two ſureties in 20 l. each, before two juſtices, not to offend again in like manner: the recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Within what times only to be killed.

No perſon ſhall, upon any pretence whatſoever, wilfully take, kill, deſtroy, carry, ſell, buy, or have in his poſſeſſion or uſe, any heath-fowl commonly called *Black game*, between *Dec.* 10, and *Aug.* 20; nor any grouſe commonly called *Red game*, between *Dec.* 10, and *Aug.*

12; nor any *buſtard*, between *Mar.* 1, and *Sept.* 1, in any year; on pain of forfeiting for the firſt offence any ſum not exceeding 20l. nor leſs than 10l.; and for the ſecond and every ſubſequent offence, not exceeding 30l. nor leſs than 20l.; half to the informer, and half to the poor. 13 *G.* 3. *c.* 55. *ſ.* 1, 2. 4.

Penalties how to be recovered.

To be recovered in any of his majeſty's courts of record at *Weſtminſter*, on proſecution within 6 kalendar months after the offence committed.——Or the ſame may be recovered before one juſtice, information on oath being made before him within three kalendar months after the offence committed; which ſaid juſtice may convict the offender by confeſſion or oath of one witneſs: and on neglect or refuſal to pay, ſhall levy the ſame by diſtreſs, together with all coſts and charges attending the ſame. And ſuch juſtice may order the offender to be detained in ſafe cuſtody, until return may conveniently be had to the warrant of diſtreſs, unleſs the ſaid offender ſhall give ſecurity, by recognizance or otherwiſe, to the ſatisfaction of ſuch juſtice, for his appearance before him on the day appointed for the return of the warrant of diſtreſs, ſuch day not exceeding 5 days from the time of taking ſuch ſecurity. And if no ſufficient diſtreſs can be had, ſuch juſtice ſhall commit the offender to the common gaol or houſe of correction, there to be kept to hard labour for any time not exceeding 6 nor leſs than 3 kalendar months, unleſs the forfeiture, and all coſts and charges attending the proſecution, be ſooner paid. *ſ.* 3, 4. 9.

Conviction.

And the conviction ſhall be drawn up in this or the like form: *Be it remembered, that on the —— day of —— in the year of our Lord ——* A. B. *having appeared before me —— one of his majeſty's juſtices of the peace for the county of ——— and due proof having been made upon oath by one or more credible witneſs or witneſſes, or by confeſſion of the party* (as the caſe may be) *is convicted of* (ſpecifying the offence, with the time and place where the ſame was committed, and alſo ſpecifying, if known, that it is the firſt, ſecond, or any ſubſequent offence againſt this act, as the caſe ſhall be). *Given under my hand and ſeal the day and year aforeſaid.* Which conviction the juſtice ſhall cauſe to be written on parchment, and returned to the next ſeſſions, there to be filed and kept amongſt the records. And the clerk of the peace ſhall grant copies thereof, on payment of 1 s. for each copy. *ſ.* 6, 7.

And if any perſon ſhall think himſelf aggrieved, he may appeal to any general quarter ſeſſions to be holden within four kalendar months after the cauſe of complaint ſhall ariſe, giving fourteen days' notice in writing to the juſtice and to every other perſon againſt whom complaint ſhall be made; and in four days after ſuch notice, entring into recognizance before a juſtice with one ſufficient ſurety, conditioned to try the appeal at, and abide the order of, and pay ſuch coſts as ſhall be awarded by the juſtices at ſuch ſeſſions. And the juſtice having received notice of appeal, ſhall return all proceedings had before him, touching the matter of the ſaid appeal, to the juſtices at ſuch ſeſſions. And the ſaid juſtices upon proof of the notice given, and of the entring into ſuch recognizance, ſhall determine the appeal in a ſummary way, and award coſts to either party. And none of the proceedings ſhall be quaſhed for want of form, nor removed by *certiorari* or other proceſs into any of the courts at *Weſtminſter*. *ſ.* 10. Appeal.

By the 9 *An. c.* 25. If any perſon whatſoever ſhall take or kill, any moor, heath-game, or grouſe, in the night-time; he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit 5l. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. Killing in the night, or on a Sunday or Chriſtmas-day.

And by the 13 *G.* 3. *c.* 80. If any perſon ſhall knowingly and wilfully kill, take, or deſtroy, or uſe any gun, dog, ſnare, net, or other engine, with intent to kill, take, or deſtroy, any moor-game or heath-game, in the night, *viz.* between the hours of 7 at night and 6 in the morning, from the 12th day of *Oct.* to the 12th day of *Feb.* and between the hours of 9 at night and 4 in the morning from the 12th day of *Feb.* to the 12th day of *Oct.*; or, in the day time, on a *Sunday* or *Chriſtmas-day:* he ſhall forfeit for the firſt offence not exceeding 20l. nor leſs than 10l.; for the ſecond offence not exceeding 30l. nor leſs than 20l.; for the third and every other ſubſequent offence, 50l. To be levied and recovered as the like penalties for killing any hare in the night, or on a *Sunday* or *Chriſtmas-day*, as is above ſet forth.

For the better preſerving the red and black game of grouſe commonly called heath-cocks, or heath-polts, no perſon whatſoever on any mountains, hills, heaths, moors, foreſts, chaſes, or other waſtes, ſhall preſume to burn be- Burning ling.

tween *Feb.* 2, and *June* 24, any grig, ling, heath, furze, goſs, or fern; on pain of being committed to the houſe of correction, for any time not exceeding one month, nor leſs than ten days, there to be whipt and kept to hard labour. 4 & 5 *W.* *c.* 23. *ſ.* 11.

As here is no method of conviction directed for this offence, the juſtices of the peace ſeem to have no cognizance thereof; but the trial and conviction muſt be at the aſſizes, or in the courts at *Weſtminſter*.

In the 5 *An.* *c.* 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* foreſt, and other places in *Nottinghamſhire*, which not being of general concern, are here omitted.

7*th.* *Of herons.*

Shooting herons. Every perſon who ſhall ſhoot at, kill, or deſtroy any heron, with gun or bow, ſhall, on conviction before two juſtices, by confeſſion or oath of two witneſſes, be committed to gaol for three months, unleſs on conviction he pay to the churchwardens for the uſe of the poor, 20s. for each heron, or after one month from his commitment, become bound by recognizance with two ſureties in 20l. each, before two juſtices, not to offend again in like manner: The recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2.

None ſhall take but by hawking. No perſon, without his own ground, ſhall ſlea, take, or cauſe to be taken, by means of craft or engine, any herons, unleſs it be with hawking, or with long bows; on pain of 6s. 8d. to him who ſhall ſue by action of debt: or the ſeſſions may call before them perſons ſuſpected, and examine them; and if found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of the forfeiture for their labour. 19 *H.* 7. *c.* 11.

Young herons. And no perſon, without his own ground, ſhall take any young herons out of the neſt; on pain of 10s. in like manner, for every young heron. 19 *H.* 7. *c.* 11.

Eggs. And if any perſon from *March* 31, to *June* 30, ſhall take or deſtroy the eggs of any heron; he ſhall be impriſoned for a year, and forfeit for every egg 8d. half to the king, and half to him that will ſue by action of debt, or before the juſtices of the peace. 25 *H.* 8. *c.* 11.

8th. *Of other fowl.*

In general; No manner of perſon, from the laſt day of *March* to the laſt day of *June* yearly, ſhall by day or night, take or deſtroy any eggs of any kind of wild fowl, from or in any neſt or place, where they ſhall chance to be laid by any kind of the ſame wild fowl; on pain of impriſonment for a year, and to forfeit for every egg of a buſtard 20d. of a bittour or ſhovelard 8d. and of other wild fowl (except crows, ravens, boſcards, and other fowl not uſed to be eaten) 1d.; half to the king, and half to him that will ſue by action of debt. Alſo the juſtices of the peace may determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.*

A. Ap-

---

* With regard to fowl not uſed to be eaten, together with certain other noxious animals, there were proviſions made by an ancient ſtatute, viz. 8 *El. c.* 15. intitled, *An Act for the preſervation of graine*, which it were to be wiſhed might be revived with a proper conſideration of the difference of the value of money betwixt that time and the preſent; by which it was required, that the churchwardens ſhould levy by an aſſeſſment, and pay for the heads of every three old crowes, choughes, or rookes, 1d.; of ſixe young crowes, choughes, or rookes, 1d.; and for every ſixe egges of any of them, 1d; for every twelve ſtares heads, 1d.; for every heade of merten hawks, fureſekytte, moldkytte, buſarde, chagge, carmeraunt, or ryngtayle, 2d.; and for two egges of them, 1d.; for every iron or oſpray's heade, 4d.; for the heade of every wood wall, pye, jay, raven, kyte, or king's fiſher, 1d.; bulfynce, or other bird that devoureth the blowth of fruit, 1d.; for the heade of every foxe or graye, 12d.; and for the heade of every fytchewe, polcate, weſel, ſtote, fayre, bade, or wylde cat, 1d; for the head of every otter or hedgehogge, 2d.; for the heades of three rattes or twelve miſe, 1d.; for the heade of every want or moldwarp, one halfpenny.

And by another ancient ſtatute 24 *H.* 8. *c.* 10. Every townſhip was required to keep a crow net, to deſtroy crows, rooks, and choughs.

There is ſome ſhadow of theſe regulations ſtill remaining in ſome pariſhes, where they give a reward for deſtroying ſeveral of the aboveſaid noxious fowl and vermin. Theſe ſtatutes were ſuffered to expire, probably becauſe in a ſhort time there would be no need of their continuance; but it might be convenient nevertheleſs, to revive the like proviſions from time to time; and amongſt the reſt of the ravenous tribe, to ſet a price now at length

A. Appointment of a gamekeeper; on 22 & 23 *C.* 2. *c.* 25. *ſ.* 2. 5 *An.* *c.* 14. *ſ.* 4. and 3 *G.* *c.* 11. *ſ.* 1.

I A. L. *eſquire, lord of the manor of* ——— *do hereby nominate, authorize, and appoint* A. G. *of* P. *in the county of* ——— *yeoman, to be my gamekeeper of and within my ſaid manor of* ——— *in the county aforeſaid, with full power, licence, and authority to kill any hare, pheaſant, partridge, or any other game whatſoever, in and upon my ſaid manor of* ——— *for my ſole uſe, and immediate benefit; and alſo to take and ſeize all ſuch guns, bows, greyhounds, ſetting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, harepipes, ſnares, or other engines, for the taking and killing of conies, hares, pheaſants, partridges, or other game, as within the precincts of my ſaid manor of* ——— *ſhall be uſed by any perſon or perſons who by law are prohibited to keep or uſe the ſame. Given under my hand and ſeal, this* ——— *day of* ——— *in the* ——— *year,* &c.

B. Form of a certificate for killing game.

I A. B. *clerk of the peace for the county of* C. [or as the caſe may be] *do hereby declare, that* E. F. *hath this day delivered into my office a paper, writing, or account, containing his name and place of abode,* [or as the caſe may be,] *hath this day regiſtered a deputation, whereby he is appointed a gamekeeper by* ——— *for the manor or lands of* ——— *which I do hereby certify, in purſuance of an act of parliament, paſſed in the twenty-fifth year of king* George *the third, intituled,* An act for repealing an act, made in the twenty-fourth year of the reign of his preſent majeſty, intituled, "An act for granting to his majeſty certain duties on certificates iſſued with reſpect to the killing of game;" and for granting other duties in lieu thereof.

---

length upon the head of that diſtinguiſhed fowl, for the ſake of which moſt of the ancient laws concerning the winged game were enacted, and which it was felony to deſtroy. But now the current hath received a contrary direction; and the hawk himſelf deſtroys more game, than gunpowder and hailſhot which have uſurped his empire.

C. Inform-

C. Information againſt a perſon for killing game without a lawful certificate.

Weſtmorland. *THE information and complaint of* A. I. *of* —— *in the county of* —— *yeoman, made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, the* —— *day of* —— *in the year* ——. *Who ſaith, That on the* —— *day of* —— *in the year* —— *at* —— *in the county aforeſaid, one* A. O. *of* —— *in the county aforeſaid, ſhoemaker, did uſe a certain dog called a greyhound,* [or as the caſe may be,] *for the taking or deſtruction of game, and did thereby and therewith take, kill, and deſtroy a hare,* [or as the caſe may be,] *without having the certificate required by law for that purpoſe; whereupon he the ſaid* A. O. *hath forfeited the ſum of twenty pounds: And therefore he the ſaid* A. I. *prayeth the judgment of me the juſtice aforeſaid in the premiſſes.*

Before me A. I.
J. P.

D. Summons thereupon.

Weſtmorland. { To the conſtable of —— in the ſaid county.

WHEREAS information and complaint hath been made unto me J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of* —— *in the county aforeſaid, ſhoemaker, on the* —— *day of* —— *in the year* —— *at* —— *in the county aforeſaid, did uſe a certain dog called a greyhound* [or as the caſe may be,] *for the taking or deſtruction of game, and did thereby and therewith take, kill, and deſtroy a hare,* [or as the caſe may be,] *without having a certificate required by law for that purpoſe, whereupon he the ſaid* A. O. *hath forfeited the ſum of twenty pounds: Theſe are therefore to require you forthwith to ſummon the ſaid* A. O. *to appear before me at* —— *in the ſaid county, the* —— *day of* —— *at the hour of* —— *to anſwer to the ſaid information and complaint, and to be further dealt with according to law. And be you then there to certify what you ſhall have done in the execution hereof. Herein fail you not. Given under my hand and ſeal the* —— *day of* —— *in the year* ——.

E. Con-

E. Conviction for killing game without a lawful certificate.

[N. B. The form of conviction in 25 *G.* 3. *c.* 50. is by 31 *G.* 3. *c.* 21. *ſ.* 4. repealed; and the following form ſubſtituted.]

Weſtmorland. *BE it remembered, that on the —— day of —— at —— A. O. of —— yeoman, was duly convicted before me* J. P. *for that the ſaid* A. O. *on —— at —— did,* (here ſtate the offence againſt the act, according to the fact,) *contrary to the form of the ſtatute; and I do declare and adjudge that the ſaid* A. O. *hath forfeited for his ſaid offence the ſum of —— to be diſtributed as the law directs. Given under my hand and ſeal the day and year firſt above mentioned.*

F. Warrant of diſtreſs for killing game without a lawful certificate.

Weſtmorland. } To the conſtable of ——

WHEREAS A. O. *of —— in the ſaid county, ſhoemaker, is this day convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *on the —— day of —— in the —— year of the reign of —— at —— in the ſaid county, did uſe a certain dog called a greyhound* [or as the caſe may be] *for the taking or deſtruction of game, and did thereby and therewith take, kill, and deſtroy a hare* [or as the caſe may be,] *without having the certificate required by law for that purpoſe, whereby he the ſaid* A. O. *hath forfeited the ſum of* 20*l. Theſe are therefore in his ſaid majeſty's name, to command you to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [Six] *days next after ſuch diſtreſs by you taken, the ſaid ſum ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained, and out of the money ariſing by ſuch ſale you do pay the ſum of —— to* A. I. *of —— in the ſaid county —— who informed me of the ſaid offence; and the ſum of —— to —— for the uſe of his majeſty; returning the overplus (if any) on demand unto him the ſaid* A. O. *And if ſufficient diſtreſs cannot be found of the goods of the ſaid* A. O. *whereon to levy the ſaid ſum of* 20*l. that then you certify the ſame to me, together with the return of this precept. Given under my hand and ſeal, the —— day of ——*, &c.

G. Com-

G. Commitment for want of diſtreſs.

Weſtmorland. { To the conſtable of —— in the ſaid county, and to the keeper of the houſe of correction at —— in the ſaid county.

WHEREAS A. O. *of* —— *in the ſaid county, ſhoemaker, was on the* —— *day of* —— *in the* —— *year of* —— *convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *on the* —— *day of* —— *in the year aforeſaid, at* —— *in the ſaid county, did uſe a certain dog called a greyhound* [or as the caſe may be] *for the taking or deſtruction of game, and did thereby and therewith take, kill, and deſtroy a hare* [or as the caſe may be] *without having the certificate required by law for that purpoſe, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 20l. *and whereas on the ſaid* —— *day of* —— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* —— *to levy the ſaid ſum of* 20l. *by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to apply the ſame according to law; and whereas it duly appears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the goods of him the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be had whereon to levy the ſame: Theſe are therefore to command you the ſaid conſtable of* —— *aforeſaid, to apprehend the body of the ſaid* A. O. *and him ſafely to convey to the houſe of correction at* —— *in the ſaid county, and there deliver him to the ſaid keeper thereof, together with this precept. And I do hereby command you, the ſaid keeper of the ſaid houſe of correction, to receive into your cuſtody in the ſaid houſe of correction the ſaid* A. O. *and him there ſafely to keep for the ſpace of three calendar months, unleſs ſuch penalty ſhall be ſooner paid; and for ſo doing, this ſhall be your ſufficient warrant. Given under my hand and ſeal the* —— *day of* —— *in the year,* &c.

H. Warrant to ſearch for dogs and engines; on the 22 & 23 C. 2. *c.* 25. *ſ.* 2.

Weſtmorland. To ——————

WHEREAS complaint hath been made unto me J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *of* —— *in the*

ſaid county, yeoman, that he the ſaid A. I. *hath good ground to ſuſpect and doth ſuſpect that* A. O. *of* ——— *aforeſaid in the county aforeſaid, yeoman, being a perſon in no reſpect qualified by the laws of this realm ſo to do, hath and keepeth in his cuſtody a greyhound* [gun, net, &c.] *to kill and deſtroy the game: Theſe are therefore to command you in his majeſty's name to enter into, and ſearch in the day time the houſes, out-houſes, and other places of him the ſaid* A. O. *at* ——— *aforeſaid, and if you there find any greyhound,* &c. *that you ſeize and keep the ſame for the uſe of* A. L. *eſquire, lord of the manor of* ——— *in which manor the ſaid houſes, out-houſes, and other places, are ſituate and do lie, or otherwiſe that you cut in pieces or deſtroy the ſame. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year,* &c.

I. Information againſt a perſon for keeping dogs, or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. *THE information and complaint of* A. I. *of* ——— *in the county of* ——— *yeoman, made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, the* ——— *day of* ——— *in the year* ——— *Who ſaith, That on the* ——— *day of* ——— *in the year* ——— *at the pariſh of* ——— *in the county aforeſaid, one* A. O. *of* ——— *in the county aforeſaid, ſhoemaker, did keep and uſe a certain dog called a greyhound* [or as the caſe is] *to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do; whereby he the ſaid* A. O. *hath forfeited the ſum of five pounds. And thereupon he the ſaid* A. I. *prayeth the judgment of me the juſtice aforeſaid in the premiſſes, and that he may have one moiety of the ſaid forfeiture, according to the form of the ſtatute in that caſe made, and that the ſaid* A. O. *may be ſummoned to anſwer the premiſſes before me the juſtice aforeſaid.*

Before me
J. P.

A. I.

K. Summons thereupon.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

WHEREAS information and complaint hath been made before me J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of* ——— *in the county aforeſaid, ſhoemaker, on the* ——— *day of* ——— *in the year* ——— *in the pariſh of* ——— *in the county aforeſaid, did keep and uſe a certain dog called a greyhound* [or as the caſe

case is] *to kill and destroy the game, he the said* A. O. *not being qualified by the laws of this realm so to do: These are therefore to require you forthwith to summon the said* A. O. *to appear before me at* —— *in the said county, the* —— *day of* —— *at the hour of* —— *to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the execution thereof. Herein fail you not. Given under my hand and seal the* —— *day of* —— *in the year* ——.

L. Conviction for keeping a greyhound, on 5 *An. c.* 14.

County of } *BE it remembered, that on the* —— *day of* —— *in the* —— *year of the reign of our sovereign lord* George *the third, by the grace of God king of* Great Britain, *&c. and in the year of our Lord* ——, *at the parish of* —— *in the said county of* —— A. I. *of the parish of* —— *in the said county of* ——, yeoman, *who prosecutes as well for the poor of the parish of* —— *in the said county of* —— *as for himself in this behalf, in his proper person cometh before me,* J. P. *esquire, one of the justices of our said lord the king assigned to keep the peace of our said lord the king in and for the said county of* ——, *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and, as well for the poor of the said parish of* —— *in the said county of* —— *as for himself, then and there giveth me the said justice to understand and be informed, That, within three months now last past, that is to say, on the* —— *day of* —— *in the* —— *year aforesaid, at the said parish of* —— *in the said county of* ——, A. O. *of the parish of* —— *in the said county of* ——, yeoman, *being a person not then having lands or tenements or any other estate of inheritance in his own right, or in his wife's right, of the clear yearly value of* 100 l. *per annum, or for term of life, nor then having lease or leases of* 99 *years, or for any longer term, of the clear yearly value of* 150 l. *nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren, being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of any lord or lady of any lordship, manor or royalty duly made, constituted or appointed by writing under his or her hand and seal, to take, kill, or destroy the game, or any sort of game*

Put the year of the reign, as, e. g. 36th.

whatſoever, in or upon any lordſhip, manor, or royalty, nor then being truly or properly a ſervant of or to any lord or lady of any lordſhip, manor, or royalty, nor then being immediately employed or appointed to take, kill, or deſtroy the game, or any kind of game whatſoever, for the ſole uſe or immediate benefit of any lord or lady of any lordſhip, manor, or royalty, nor then being a perſon in any manner whatſoever qualified or authorized to kill game, or to keep any greyhound for the deſtruction of the game of this kingdom, did keep a certain greyhound for the deſtruction of the game of this kingdom, contrary to the form of the ſtatute in ſuch caſe made and provided, whereby and by force of the ſaid ſtatute the ſaid A. O. *hath forfeited for his ſaid offence, the ſum of* 5l. *one half thereof to the ſaid* A. I. *the informer, and the other half thereof to the poor of the ſaid pariſh of —— —, where the ſaid offence was committed: And thereupon the ſaid* A. I. *the informer humbly prays the judgment of me the ſaid juſtice in the premiſes, according to the form of the ſaid ſtatute, and that the ſaid* A. O. *may be ſummoned to anſwer the premiſes and make his defence thereto, before me the ſaid juſtice: Whereupon, the ſaid* A. O. *having been duly ſummoned in this behalf, to anſwer and make his defence to the ſaid information and the offence therein charged upon him before me the ſaid juſtice, afterwards, that is to ſay, on the —— day of —— in the —— year aforeſaid, at the ſaid pariſh of —— in the ſaid county of ——, appeareth and is preſent before me the ſaid juſtice, in order to anſwer and make good his defence to the ſaid information, and the offence therein charged upon him as aforeſaid; and he the ſaid* A. O. *having heard the ſame, is aſked by me the ſaid juſtice, if he can ſay any thing for himſelf why he the ſaid* A. O. *ſhould not be convicted of the premiſes above charged on him, in form aforeſaid, who pleadeth, that he is not guilty of the ſaid offence: Nevertheleſs, on the ſaid —— day of —— in the —— year aforeſaid, at the ſaid pariſh of —— in the ſaid county of ——, one credible witneſs, to wit,* A. W. *of the pariſh of —— in the ſaid county of ——,* yeoman, *cometh before me the ſaid juſtice, in his proper perſon, and before me the ſaid juſtice the ſaid* A. W. *being then and there, to wit, on the ſame day and year laſt aforeſaid, at the ſaid pariſh of —— in the ſaid county of ——, duly ſworn touching the premiſes, upon the holy goſpel of God, upon his corporal oath to him then and there adminiſtered by me the ſaid juſtice, (I the ſaid juſtice having then and there full power and authority to adminiſter the ſaid oath to the ſaid* A. W.) *depoſeth, ſweareth, and upon his oath aforeſaid affirmeth and ſaith, in the preſence and hearing of the ſaid* A. O. *that within*

three

three months next before the said information was made before me the said justice, by the said A. I. *as aforesaid, that is to say, on the said —— day of —— in the —— year aforesaid, at the said parish of ——— in the said county of ——, the said* A. O. *being a person not then having lands or tenements, or any other estate of inheritance in his own right, or in his wife's right, of the clear yearly value of* 100*l. per annum, or for term of life, nor then having lease or leases for ninety-nine years, or for any longer term, of the clear yearly value of* 150*l. nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren, being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of any lord or lady of any lordship, manor, or royalty, duly made, constituted or appointed by writing under his or her hand and seal, to take, kill, or destroy the game, or any kind of game whatsoever, in or upon any lordship, manor, or royalty, nor then being truly or properly a servant of or to any lord or lady of any lordship, manor or royalty, nor then being immediately employed or appointed to take, kill, or destroy the game, or any kind of game whatsoever, for the sole use or immediate benefit of any lord or lady of any lordship, manor, or royalty, nor then being a person in any manner whatsoever qualified or authorized to kill game, or to keep a greyhound for the destruction of the game of this kingdom, did keep a certain greyhound for the destruction of the game of this kingdom, contrary to the form of the statute in such case made and provided: Whereupon, all and singular the matters and things in the said information and evidence contained, being by the said* A. O. *then heard and fully understood, the said* A. O. *is asked by me the said justice what he hath to say or offer in his defence against the said information and offence, and in answer to the evidence given as above mentioned, and what he hath to say why he should not be convicted of the premises so charged upon him: And for as much as the said* A. O. *doth not say or offer any thing in his defence against the said information and offence, or produce or offer any evidence in answer thereto, and to the evidence given as above mentioned, it manifestly appears to me the said justice, that the said* A. O. *is guilty of the premises above charged upon him in and by the said information: Wherefore I the said justice, upon the oath of one credible witness so taken before me as aforesaid, do adjudge that the said* A. O. *within three months next before the said information was made before me the said justice, by the said* A. I. *as aforesaid, that is to say, on the said —— day of ——— in*

——— *in the* —— *year aforesaid, at the said parish of* —— *in the said county of* ———, *being a person not then having any lands or tenements or any other estate of inheritance in his own right, or in his wife's right, of the clear yearly value of* 100l. *per annum, or for a term of life, nor then having lease or leases for* 99 *years, or for any longer term, of the clear yearly value of* 150l. *nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren, being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of any lord or lady of any manor, lordship, or royalty, duly made, constituted, or appointed by writing under his or her hand and seal, to take, kill, or destroy the game, or any kind of game whatsoever, in or upon any manor, lordship, or royalty, nor then being truly or properly a servant of or to any lord or lady of any manor, lordship, or royalty, nor then being immediately employed or appointed to take, kill, or destroy the game, or any kind of game whatsoever, for the sole use or immediate benefit of any lord or lady of any manor, lordship, or royalty, nor then being a person in any manner whatsoever qualified or authorized to kill game, or to keep a greyhound, for the destruction of the game of this kingdom, did keep a certain greyhound for the destruction of the game of this kingdom, contrary to the form of the statute in such case made and provided; and therefore I the said justice, on the said —— day of ——— in the —— year aforesaid, at the said parish of —— in the said county of ———, do convict the said* A. O. *of the offence aforesaid in and by the said information charged upon him, and the said* A. O. *is hereby convicted thereof by me the said justice, on the oath of one credible witness, according to the form of the statute in such case made and provided: and I the said justice do adjudge, that the said* A. O. *for his offence aforesaid, hath forfeited the sum of* 5l. *of lawful money of* G. B. *to be distributed as the statute aforesaid doth direct. In witness whereof I the said justice to this present record of conviction have set my hand and seal, at the parish of —— aforesaid in the said county of ———, the ——— day of ——— in the ——— year aforesaid, and in the year of our Lord ———.*

If he doth not appear upon the summons, or confess the offence, the form may be varied accordingly; as is set forth specially under the title **Conviction.**

M. War-

M. Warrant to diſtrain 5l. for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. To ——— ———

WHEREAS A. O. *of* ——— *in the ſaid county, ſhoemaker, is this day convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *being a perſon not qualified by the laws of this realm ſo to do, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *did keep and uſe in the pariſh of* ——— *aforeſaid, in the county aforeſaid, a certain dog called a grey-hound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 5l. *to be diſtributed as herein-after is mentioned: Theſe are therefore in his ſaid majeſty's name, to command you to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* (*a*) *days next after ſuch diſtreſs by you taken, the ſaid ſum together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods, ſo by you diſtrained, and out of the money ariſing by ſuch ſale that you do pay one half of the ſaid ſum of* 5l. *to* A. I. *of* ——— *in the ſaid county, yeoman, who informed me of the ſaid offence, and the other half of the ſaid ſum of* 5l. *to the overſeers of the poor of the pariſh of* ——— *aforeſaid, where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; returning the overplus on demand unto him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods of the ſaid* A. O. *whereon to levy the ſaid ſum of* 5l. *that then you certify the ſame to me, together with the return of this precept. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of* ———

N. Commitment for want of diſtreſs, for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, ſhoemaker, was on the* ——— *day of* ——— *in the* ——— *year of* ——— *convicted before me* J. P. *eſquire,*

(*a*) Not leſs than 4, nor more than 8 days. 27 *G.* 2. *c.* 20.

one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. *a credible witness, for that he the said* A. O. *not being a person by the laws of this realm qualified so to do, on the ——— day of ——— in the year aforesaid, did keep and use in the parish of ——— aforesaid in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said* A. O. *hath forfeited the sum of* 5 l. ; *and whereas on the said ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said sum of* 5 l. *by distress and sale of the goods of him the said* A. O. *and to distribute the same according as is directed by the statute in that behalf made; and whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods of the said* A. O. *as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of ——— aforesaid, to apprehend the body of the said* A. O. *and him safely to convey to the house of correction at ——— in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you, the said keeper of the said house of correction, to receive into your custody in the said house of correction the said* A. O. *and him there safely to keep for the space of three months: and for so doing this shall be your sufficient warrant. Given under my hand and seal the ——— day of ——— in the ——— year,* &c.

O. *Certiorari* bond, on a conviction for keeping dogs or engines; on the 5 *An. c.* 14. *s.* 2.

KNOW all men by these presents, &c. *Whereas the above bound* A. O. *was lately convicted before* J. P. *esquire, one of his majesty's justices of the peace in and for the county of ——— aforesaid of keeping and using at ——— aforesaid in the said county, a greyhound to kill and destroy the game; and whereas the said* A. O. *hath since his said conviction sued out his majesty's writ of* certiorari *to remove the same, and the proceedings thereupon, before the king himself wherever he shall be in* England *on ———* (the day of the return of the certiorari]: *The condition of the above obligation is such, that if the above-bound* A. O. *do and shall (according to the true intent and meaning of the statute in that case made) well and truly pay to the said* A. I. *within* 14 *days after the said conviction shall be confirmed, or a* procedendo *granted thereupon, his full*

coſts and charges which he ſhall ſuſtain touching or concerning the ſaid conviction and removal thereof by the ſaid writ of certiorari; *then the above-written obligation ſhall be void, otherwiſe of force.*

P. Warrant againſt an innkeeper for having game in his poſſeſſion; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. To the conſtable of ——

WHEREAS A. I. *of* —— *hath this day made information and complaint upon oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that on the* —— *day of* —— *now laſt paſt,* A. O. *of* —— *in the pariſh of* —— *in the county aforeſaid innkeeper at* —— *aforeſaid in the pariſh and county aforeſaid, in the houſe of him the ſaid* A. O. *then and there had in his poſſeſſion two partridges* [or, *did offer to ſell two partridges,* or as the caſe ſhall be], *he the ſaid* A. O. *being no ways qualified by the laws of this realm to have the ſaid two partridges in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made and provided: Theſe are therefore to command you, to bring the ſaid* A. O. *before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to anſwer the premiſes, and to be further dealt withal according to law. Given under my hand and ſeal, the* —— *day of* —— *in the* —— *year,* &c.

Conviction of an innkeeper, for having two partridges in his cuſtody and ſelling the ſame; on the 5 *An. c.* 14. and 28 *G.* 2. *c.* 12.

Weſtmorland. *BE it remembered, That on the* 30*th day of* October *in the* 23*d year of the reign of our ſovereign lord* George *the third, by the grace of God king of* Great Britain, *&c. at* W. *in the county of* Weſtmorland, A. I. *of* L. *in the county of* Cheſter *eſquire, in his proper perſon, cometh before me* J. P. *clerk, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in and for the ſaid county of* W. *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed within the ſame county, and then and there giveth me the ſaid juſtice to underſtand and be informed, That, within three months now laſt paſt, that is to ſay, on the* 2*d day of* October, *in the*

22d year of the reign of our ſaid lord the preſent king, at the pariſh of M. in the ſaid county of W. A. O. of the pariſh of M. aforeſaid innkeeper, being a perſon not then having lands or tenements or any other eſtate of inheritance in his own right, or in his wife's right, of the clear yearly value of 100 l. per annum, or for term of life, nor then having leaſe or leaſes of 99 years, or for any longer term, of the clear yearly value of 150 l. nor then being the ſon nor heir apparent of an eſquire or other perſon of higher degree, nor then being the owner or keeper of any foreſt, park, chaſe, or warren, being ſtocked with deer or conies for his neceſſary uſe in reſpect of ſuch foreſt, park, chaſe, or warren, nor then being lord of any manor, lordſhip, or royalty, nor then being gamekeeper to any lord or lady of any lordſhip, manor, or royalty, duly made, conſtituted, or appointed by writing under his or her hand and ſeal, to take, kill, or deſtroy the game, or any ſort of game whatſoever, in or upon any lordſhip, manor, or royalty, nor then being truly or properly a ſervant of or to any lord or lady of any lordſhip, manor, or royalty, nor then being immediately employed or appointed to take, kill, or deſtroy the game, or any kind of game whatſoever, for the ſole uſe or immediate benefit of any lord or lady of any lordſhip, manor, or royalty, nor then being a perſon in any manner whatſoever qualified or authorized to kill game, and being then and there an innkeeper, unlawfully had in his cuſtody two partridges, and did then and there ſell (or, offer to ſell) (a) the ſame partridges, contrary to the form of the ſtatute in that caſe made and provided: and the ſaid A. I. the ſaid informer, prayeth that the ſaid A. O. may be convicted of the ſaid offence above laid to his charge. Whereupon the ſaid A. O. having been duly ſummoned in this behalf to anſwer and make his defence to the ſaid information, and the offence therein charged upon him before me the ſaid juſtice, afterwards, that is to ſay, on the 13th of November in the 23d year aforeſaid, at W. aforeſaid in the ſaid county of W., appeareth and is preſent before me the ſaid juſtice, in order to anſwer and make good his defence to the ſaid information and offence charged on him as aforeſaid: and he the ſaid A. O. having heard the ſame, is aſked by me the ſaid juſtice if he can ſay any thing for himſelf, why he the ſaid A. O. ſhould not be convicted of the premiſes above charged on him in form aforeſaid, who pleadeth, that he is not guilty of the ſaid offence: Nevertheleſs, on the 13th day of November in the 23d year aforeſaid, at W. aforeſaid, in the ſaid county of W. one credible witneſs, to wit, J. W. of H. in the ſaid county of W. yeoman, cometh before me the ſaid juſtice, in his own proper perſon, and before me the ſaid juſtice the ſaid J. W.

(a) This ſhould be ſtated according to the evidence. If the offender only had the birds in his cuſtody, the information ſhould be confined to that part; if he actually ſold, omit the offer to ſell; if he offered to ſell, omit the allegation that he actually ſold.

J. W. *being then and there, to wit, on the day and year laſt aforeſaid, at* W. *aforeſaid, duly ſworn touching the premiſes upon the holy goſpel of God, upon his corporal oath to him then and there adminiſtered by me the ſaid juſtice,* (*I the ſaid juſtice having then and there full power and authority to adminiſter the ſaid oath to the ſaid* J. W.) *depoſeth, ſweareth, and upon his oath aforeſaid affirmeth and ſaith, in the preſence and hearing of the ſaid* A. O. *that within three months next before the ſaid information was made before me the ſaid juſtice by the ſaid* A. I. *as aforeſaid, to wit, on the ſaid 2d day of* October *in the 22d year aforeſaid, at the pariſh of* M. *aforeſaid, he the ſaid* A. O. *being a perſon not then having lands, tenements, or any other eſtate of inheritance in his own right, or in his wife's right, of the clear yearly value of* 100l. *per annum, or for term of life, nor then having leaſe or leaſes of* 99 *years, or for any longer term, of the clear yearly value of* 150l. *nor then being the ſon and heir apparent of an eſquire or other perſon of higher degree, nor then being the owner or keeper of any foreſt, park, chaſe, or warren, being ſtocked with deer or conies for his neceſſary uſe in reſpect of ſuch foreſt, park, chaſe, or warren, nor then being lord of any manor, lordſhip, or royalty, nor then being gamekeeper of any lord or lady of any lordſhip, manor, or royalty, duly made, conſtituted, or appointed by writing under his or her hand and ſeal, to take, kill, or deſtroy the game, or any ſort of game whatſoever, in or upon any lordſhip, manor, or royalty, nor then being truly or properly a ſervant of or to any lord or lady of any lordſhip, manor, or royalty, nor then being immediately employed or appointed to take, kill, or deſtroy the game, or any kind of game whatſoever, for the ſole uſe or immediate benefit of any lord or lady of any lordſhip, manor, or royalty nor then being a perſon in any manner whatſoever qualified or authorized to kill game, and then and there being an innkeeper, unlawfully had in his cuſtody two partridges, and did then and there ſell* (or *offer to ſell*) *the ſame, contrary to the form of the ſtatute in that caſe made and provided: Whereupon all and ſingular the matters and things in the ſaid information and evidence contained being by the ſaid* A. O. *then heard and fully underſtood, the ſaid* A. O. *is by me the ſaid juſtice aſked what he hath to ſay or offer in his defence againſt the ſaid information and offence, and in anſwer to the evidence given as above mentioned, and what he hath to ſay why he ſhould not be convicted of the premiſes ſo charged upon him: And foraſmuch as upon hearing and fully underſtanding all and every the matters and things by the ſaid* A. O. *alleged and proved in his defence touching the premiſes in the ſaid information ſpecified, it manifeſtly appears to me the ſaid*

juſtice, that the ſaid A. O. *is guilty of the premiſes above charged upon him in the ſaid information; it is therefore adjudged by me the ſaid juſtice, upon the teſtimony of the ſaid* J. W. *a credible witneſs, upon his oath before me the ſaid juſtice ſo taken as aforeſaid, that the ſaid* A. O. *on the ſaid 2d day of* October *in the 22d year aforeſaid, at the pariſh of* M. *aforeſaid, within three months next before the ſaid information was made before me the ſaid juſtice by the ſaid* A. I. *as aforeſaid, unlawfully had in his cuſtody two partridges, and did then and there ſell* (or *offer to ſell) the ſame, contrary to the form of the ſtatute in that caſe made and provided: and that the ſaid* A. O. *had not then any lands or tenements, or any other ſtate of inheritance in his own right, or in his wife's right, of the clear yearly value of* 100l. *per annum, or for term of life, nor then had leaſe or leaſes for* 99 *years, or for any longer term, of the clear yearly value of* 150l. *nor then was the ſon and heir apparent of an eſquire or other perſon of higher degree, nor then was the owner or keeper of any foreſt, park, chaſe, or warren, being ſtocked with deer or conies for his neceſſary uſe, in reſpect of ſuch foreſt, park, chaſe, or warren, nor then was lord of any manor, lordſhip, or royalty, nor then was gamekeeper of any lord or lady of any lordſhip, manor, or royalty, duly made, conſtituted, or appointed, by writing under his or her hand and ſeal, to take, kill, or deſtroy the game, or any ſort of game whatſoever, in or upon any lordſhip, manor, or royalty, nor then was truly or properly a ſervant of or to any lord or lady of any lordſhip, manor, or royalty, nor then was immediately employed or appointed to take, kill, or deſtroy the game, or any kind of game whatſoever, for the ſole uſe or immediate benefit of any lord or lady of any lordſhip, manor, or royalty, nor then was a perſon in any manner whatſoever qualified or authorized to kill game, and was then and there an innkeeper: And thereupon, I the ſaid juſtice, on the ſaid 13th day of* November *in the 22d year aforeſaid, at* W. *aforeſaid, in the ſaid county of* W. *do convict the ſaid* A. O. *of the offence aforeſaid, in and by the ſaid information charged againſt him, and he the ſaid* A. O. *is hereby convicted thereof by me the ſaid juſtice, upon the oath of one credible witneſs, according to the form of the ſtatute in that caſe made and provided: and I the ſaid juſtice do adjudge that the ſaid* A. O. *for his offence aforeſaid, hath forfeited the ſum of* 10l. *of lawful money of* Great Britain, *that is to ſay, the ſum of* 5l. *for each of the ſaid partridges: And I do adjudge, that one half of the ſaid ſum of* 10l. *be paid to the ſaid informer* A. I. *and the other half of the ſaid ſum of* 10l. *be paid to the poor of the pariſh of* M. *aforeſaid, where the ſaid offence was committed, according to the form of the ſtatute in*

that

that caſe made and provided. In witneſs whereof I the ſaid J. P. *the juſtice aforeſaid, have to this preſent record of conviction ſet my hand and ſeal, at* W. *aforeſaid, in the ſaid county of* W. *the ſaid* 13*th day of* November *in the* 23*d year aforeſaid, and in the year of our Lord* 1782.

The above conviction was drawn by a gentleman of great eminence at the bar as a ſpecial pleader, who ſubjoined the following obſervations: That though the ſtatute, 5 *Ann. c.* 14. makes no diſtinction between thoſe *innkeepers* who are qualified by eſtate, and thoſe who are not, he thought it ſafer to allege want of qualification, unleſs the defendant actually ſold the birds, or offered them to ſale; in which caſe, as the ſtatute 28 *Geo.* 2. *c.* 12. inflicts the penalty, whether the perſon is qualified or not, it would be proper to omit the whole of what is ſtated in the conviction reſpecting qualifications; and that he thought it would not be proper to conſider the uſing the birds in the defendant's houſe, as an innkeeper, in providing for his gueſts, to be an actual ſale.

Q. Warrant to levy 5 l. on the goods of an innkeeper convicted of having game in his cuſtody; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. To the conſtable of ——

WHEREAS A. O. *of —— in the pariſh of —— in the county aforeſaid, innkeeper, is on this preſent —— day of —— in the —— year of the reign of —— duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *on the —— day of —— in the —— year of —— at the pariſh of —— aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion two partridges, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid two partridges in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof, he the ſaid* A. O. *hath forfeited the ſum of* 10 l. *Theſe are therefore to require you to levy the ſaid ſum of* 10 l. *by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum of* 10 l. *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained*

as

as aforeſaid, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of 10l. *to* A. I. *of* ——— *yeoman, who informed me of the ſaid offence, and the other half to the poor of the pariſh of* ——— *aforeſaid, within which pariſh the ſaid offence was committed; returning to him the ſaid* A. O. *the overplus on demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted: And if ſufficient diſtreſs cannot be had of the goods of the ſaid* A. O. *that you certify the ſame to me together with the return of this precept. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of* ———

R. Commitment on the ſame for want of diſtreſs; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of —— in the ſaid county, and to the keeper of the houſe of correction at —— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, innkeeper, was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *of* ——— *a credible witneſs, for that he the ſaid* A. O. *on the* —— *day of* —— *in the* —— *year of* —— *at the pariſh of* —— *aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion two partridges; he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid two partridges in his cuſtody or poſſeſſion againſt the form of the ſtatute in that caſe made, by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 10l. *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* —— *to levy the ſaid ſum of* 10l. *by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſaid ſtatute: And whereas it duly appears to me, as well on the oath of the ſaid conſtable of* ——— *as otherwiſe, that he the ſaid conſtable of* ——— *hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be found whereon to levy the ſame; Theſe are therefore to require you the conſtable of* ——— *aforeſaid, to carry the ſaid* A. O. *to the ſaid houſe of correction of* ——— *aforeſaid, and deliver him to the ſaid keeper thereof, together with this precept. And you the ſaid keeper are hereby commanded to receive into your cuſtody in the ſaid houſe of correction him the ſaid* A. O. *and him there ſafely to keep for the*

the ſpace of three months, without bail or mainpriſe; and for your ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal, the ——— day of ———

S. Warrant to ſearch for veniſon or engines; on the 16 G. 3. c. 30.

Weſtmorland. To the conſtable of ——

WHEREAS A. I. *of —— in the ſaid county, yeoman hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that there is reaſon to ſuſpect that* A. O. *of ——— in the ſaid county, taylor, hath in his cuſtody or poſſeſſion, or in his dwelling-houſe, out-houſe, yard, garden, or other place at ——— aforeſaid, a deer, which hath been unlawfully killed, or the head, ſkin, or other part thereof, as alſo divers ſlips, nooſes, toyles, ſnares, and other engines or ſome of them for the unlawful taking of deer: Theſe are therefore to require you, that you do forthwith ſearch him the ſaid* A. O. *and his ſaid dwelling-houſe, out-houſe, garden, or place, at ——— aforeſaid; and if on ſuch ſearch you ſhall find any deer ſuſpected to have been unlawfully killed, or the head, ſkin, or other part thereof, or any ſlip, nooſe, toyle, ſnare, or other engine ſuſpected to be uſed for the unlawful taking or killing of deer, that you bring the ſame and alſo him the ſaid* A. O. *before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to be examined concerning the premiſſes, and further dealt with according to law. Herein fail not. Given under my hand and ſeal the —— day of —— in the year ——*

T. Information againſt a deer-ſtealer; on the 16 G. 3. c. 30.

Weſtmorland. *THE information and complaint of* A. I. *of —— in the county of —— gentleman, made upon oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, the ——— day of ——— in the year ——— who on his oath aforeſaid ſaith, That on the ——— day of ——— in the year ——— in a certain park of Sir* J. B. *baronet, called ——— park, in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, one* A. O. *late of ——— in the county aforeſaid, labourer, unlawfully hunted and attempted to kill one fallow deer* [or *as* the caſe ſhall be] *of the ſaid Sir* J. B. *without the conſent of the ſaid Sir* J. B. *and without being otherwiſe duly authoriſed; whereby*

whereby he the ſaid A. O. *hath forfeited the ſum of* ——— *And thereupon he the ſaid* A. I. *prayeth the judgment of me the juſtice aforeſaid in the premiſes, and that he may have one moiety of the ſaid forfeiture, according to the form of the ſtatute in that caſe made; and that the ſaid* A. O. *may be brought before me the ſaid juſtice aforeſaid to anſwer the premiſes.*

Before me A. I.
J. P.

U. Warrant thereupon to apprehend the offender.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

WHEREAS information and complaint upon oath hath been made before me J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that on the —— day of ——— in the ——— in a certain park of Sir* J. B. *baronet, called ——— park, in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, one* A. O. *late of —— in the county aforeſaid, labourer, unlawfully hunted and attempted to kill one fallow deer of the ſaid Sir* J. B. *without the conſent of him the ſaid Sir* J. B. *and without being otherwiſe duly authorized: Theſe are therefore to require you to apprehend the ſaid* A. O. *and bring him before me the juſtice aforeſaid, at the houſe of ——— in ——— in the ſaid county, on —— the ——— day of this preſent month of —— to anſwer the premiſſes, and to be further dealt with according to law. Herein fail you not. Given under my hand and ſeal the —— day of —— in the year of our Lord ———*

W. Warrant of diſtreſs againſt a deer-ſtealer; on the 16 G. 3. c. 30.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

WHEREAS A. O. *of ——— in the ſaid county, labourer, is this day duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *yeoman, a credible witneſs, for that he the ſaid* A. O. *on the ——— day of ——— in the year ———*

in

in a certain park of Sir J. B. *baronet, called* —— *park, in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully hunted and attempted to kill one fallow deer of the ſaid Sir* J. B. *without the conſent of him the ſaid Sir* J. B. *and without being otherwiſe duly authorized, againſt the form of the ſtatute in that caſe made and provided; by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* —— *to be diſtributed as herein after is mentioned: Theſe are therefore in his ſaid majeſty's name to command you to levy the ſaid ſum by diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* —— *days next after ſuch diſtreſs by you taken, the ſaid ſum of* —— *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained; and out of the money ariſing by ſuch ſale, that you do pay one moiety of the ſaid ſum of* —— *to* J. K. *for the uſe of his ſaid majeſty, his heirs and ſucceſſors; and the other moiety to the ſaid* A. I. *who proſecutes for the ſame, and who informed me of the ſaid offence; returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be had or found, by and on which the ſaid ſum of* —— *may be levied, you are hereby required to certify the ſame to me, within two days after the date of this preſent warrant. Given under my hand and ſeal, the* —— *day of* —— *in the year of our Lord* ——.

X. Conſtable's return of want of diſtreſs indorſed on the warrant.

A. C. *conſtable of* —— *within mentioned maketh oath this* —— *day of* —— *in the year within mentioned, that he hath made diligent ſearch for, but doth not know of, nor can find ſufficient goods and chattels of* A. O. *within mentioned, whereon to levy the within-mentioned ſum of* ——.

A. C.

Before me the juſtice within mentioned,

J. P.

&. Commitment of a deer ſtealer for want of diſtreſs; on the 16 *G.* 3. *c.* 30.

Weſtmorland. { To the conſtable of —— in the ſaid county, and to the keeper of the common gaol at —— in the ſaid county.

WHEREAS A. O. *of* —— *in the ſaid county, labourer, was on the* —— *day of* —— *duly convicted*

victed before me J. P. *esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers trespasses and other misdemeanors in the said county committed, by the oath of* A. W. *a credible witness, for that he the said* A. O. *on the* ——— *day of* ——— *in the year* ——— *in a certain park of Sir* J. B. *baronet, called* ——— *park, in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully hunted and attempted to kill one fallow deer of the said Sir* J. B. *without the consent of him the said Sir* J. B. *and without being otherwise duly authorized, against the form of the statute in that case made and provided, by reason whereof he the said* A. O. *hath forfeited the sum of* ———. *And whereas on the said* ——— *day of* ——— *in the year aforesaid, I did issue my warrant to the constable of* ——— *in the said county, to levy the said sum of* ——— *by distress and sale of the goods and chattels of him the said* A. O. *and to pay over the same according as is directed by the statute aforesaid: And whereas it appears to me, on the oath of the said constable of* ——— *that he the said constable hath used his best endeavours to levy the said sum of* ——— *on the goods and chattels of him the said* A. O. *and that no sufficient distress can be found whereon to levy the same: Therefore, in pursuance of the statute aforesaid, I do hereby command you the said constable of* ——— *safely to convey him the said* A. O. *to the said common gaol at* —— *aforesaid, and him to deliver to the keeper thereof aforesaid, together with this precept. And I do hereby command you the said keeper of the gaol aforesaid, to receive into your custody in the said gaol him the said* A. O. *and him there safely to keep for the space of one whole year, unless the said penalty shall be sooner paid. Herein fail you not respectively as you will answer the contrary at your peril. Given under my hand and seal, the* —— *day of* —— *in the year* ——.

Gaming.

Gaming in public-houses. See title Alehouses.

Gaming not an offence at common law.

MR. *Dalton* says that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in se* of their own nature, but only prohibited by statute. *Dalt. c.* 46.

But

But it hath been ſaid, that all common gaming-houſes are nuſances in the eye of the law, as being great temptations to idleneſs, and apt to draw together numbers of diſorderly perſons. 1 *Haw.* 198. Gaming-houſe a nuſance.

By the ſtatute of the 33 *H.* 8. *c.* 9. No perſon ſhall for his gain, lucre, or living, keep any common houſe, alley, or place of bowling, coyting, cloyſh, cayls, half-bowl, tennis, dicing table, carding, or any unlawful game, then or thereafter to be uſed, on pain of forfeiting 40 s. a-day. *ſ.* 11. Gaming-houſes prohibited by the 33 H. 8.

But it was reſolved upon this clauſe, in the third year of *J.* 1. that if the gueſts in an inn or tavern call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, theſe are not within the ſtatute; for although the games be uſed in an inn, tavern, or other houſe, yet if the houſe be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the houſe, this is not within the ſtatute, nor is ſuch perſon that plays in ſuch houſe that is not kept for lucre or gain, within the penalty of that law. *Dalt. c.* 46.

And moreover, by the ſame ſtatute it is further enacted, that every perſon uſing and haunting any of the ſaid houſes and plays, and there playing, ſhall forfeit 6 s. 8 d. 33 *H.* 8. *c.* 9. *ſ.* 12. Haunting gaming-houſes.

And all and every juſtices of the peace, mayors, ſheriffs, and other head officers, may enter all ſuch houſes and places, where ſuch games ſhall be ſuſpected to be holden; and as well the keepers of the ſame, as alſo the perſons there reſorting and playing, may take, arreſt, and impriſon, and keep in priſon, until the ſaid keepers have found ſureties to the king's uſe, to be bound by recognizance or otherwiſe, no longer to uſe, keep, or occupy any ſuch houſe, play, game, alley, or place; and alſo that the perſons there ſo found, be in like caſe bound by themſelves, or with ſureties, no more to play, haunt, or exerciſe from thenceforth, in, at, or to any of the ſaid places, or at any of the ſaid games. *ſ.* 14. Power of the juſtices.

And the mayors, ſheriffs, bailiffs, conſtables, and other head officers within every city, borough, or town, ſhall make due ſearch weekly, or at the furtheſt once a month, in all places where any ſuch houſes or places ſhall be ſuſpected to be kept; and if they ſhall not make ſuch ſearch at the furtheſt once a month, if the caſe ſo require, every ſuch perſon offending ſhall forfeit 40s. for each month. *ſ.* 15. And of officers in cities and towns.

Artificers and ſervants.

And by the ſame act, no manner of artificer, handicraftſman, huſbandman, apprentice, labourer, ſervant at huſbandry, journeyman, or ſervant of artificer, mariners, fiſhermen, waterman, or any ſerving man, ſhall play at the tables, tennis, dice, cards, bowls, claſh, coyting, logating, or any other unlawful game, out of *Chriſtmas*, on pain of 20 s. and in *Chriſtmas* to play at the ſaid games only in their maſters' houſes, or in their maſters' preſence; and alſo no perſon ſhall at any time play at bowls in open places out of his garden or orchard, on pain of 6 s. 8 d. *ſ.* 16.

But any maſter may licenſe his ſervant to play at cards, dice, or tables with himſelf, or with any other gentleman openly in his houſe, or in his preſence. *ſ.* 22.

And any nobleman, or other perſon having 100 l. a-year, may command or licenſe his ſervants or family of his houſe, to play within the precinct of his houſe, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well among themſelves, as others repairing to the ſame houſe. *ſ.* 23.

Puniſhing offenders.

And all juſtices of the peace, mayors, bailiffs, ſheriffs, and other head officers, and every of them, *finding or knowing* any perſon uſing unlawful games, contrary to this act, may commit every ſuch offender to ward, there to remain without bail or mainprize, till he be bound by obligation to the king's uſe, in ſuch ſum as by the diſcretion of the ſaid juſtices, or other ſuch officers ſhall be thought reaſonable, that they ſhall not from thenceforth uſe ſuch unlawful games. *ſ.* 16.

And by the 2 *G.* 2. *c.* 28. Where it ſhall be *proved on the oath of two witneſſes* before any juſtice of the peace, as well as where he ſhall find upon his own view, that any perſon hath uſed any unlawful game contrary to the ſaid ſtatute; the ſaid juſtice ſhall have power to commit him to priſon without bail, unleſs and until he ſhall enter into recognizance, with ſureties, or without, at the diſcretion of the juſtice, that he ſhall not from thenceforth play at or uſe ſuch unlawful game. *ſ.* 9.

Application of the penalties.

And where any of the forfeitures abovementioned ſhall be found within the precincts of any leet, the lord ſhall have one half, and the other half ſhall be to him that ſhall ſue in any of the king's courts; and elſewhere, they ſhall be half to the king, and half to him that ſhall ſue in like manner. 33 *H.* 8. *c.* 9. *ſ.* 18.

How to be recovered.

But by the 31 *El. c.* 5. All ſuits to be purſued upon any ſtatute (that is, any ſtatute then in force) for uſing any

any unlawful game, ſhall be ſued and proſecuted, or otherwiſe heard and determined, in the general quarter ſeſſions or aſſizes of the county where the offence ſhall be committed, or in the leet within which it ſhall happen, and not in any wiſe out of the county. *ſ.* 7.

No privilege of parliament.

And no privilege of parliament ſhall be allowed to any perſon, againſt whom a proſecution ſhall be commenced, for keeping any common gaming-houſe, or place for playing at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 7.

Gaming-houſe within London and 20 miles thereof.

By the 25 *G.* 2. *c.* 36. Any houſe, room, garden, or other place kept for public dancing, muſic, or other entertainment of the like kind, in *London*, or within 20 miles thereof, without licence as heretofore following (except the theatres of *Drury-lane*, *Covent-garden*, and *Hay-market*, and other entertainments exerciſed by letters patents or licence of the crown, or of the lord chamberlain) ſhall be deemed a diſorderly houſe or place, and the keeper thereof ſhall forfeit 100 l. with full coſts, to him who ſhall ſue (in ſix months) in any of the courts at *Weſtminſter*. And the perſon who ſhall appear to act as maſter, or as having the management of ſuch diſorderly houſe, ſhall be deemed a keeper thereof.

Which ſaid licence ſhall be granted at the laſt preceding *Michaelmas* ſeſſions, and ſhall be ſigned and ſealed by four juſtices in open court, and afterwards be publicly read by the clerk of the peace, with the names of the juſtices ſubſcribing the ſame; and no licence ſhall be granted at any adjourned ſeſſions; nor ſhall any fee be taken for the ſame. And there ſhall be inſerted in ſuch licence, and made conditions thereof, that the words following ſhall be affixed in large capital letters over the door or entrance of every ſuch licenſed houſe or place, *viz. Licenſed purſuant to act of parliament of the twenty-fifth of king* George *the ſecond*; and that it ſhall not be opened before five in the afternoon. And in caſe of a breach of either of the ſaid conditions, the licence ſhall be forfeited, and revoked by the juſtices at the next ſeſſions, and ſhall not be renewed.

And to encourage proſecutions againſt perſons keeping bawdy-houſes, gaming-houſes, or other diſorderly houſes, the conſtable, on notice given him in writing by any two inhabitants of the pariſh paying ſcot and lot, of any perſon keeping ſuch houſe, ſhall forthwith go with them to a juſtice of the peace; and ſhall (on their making oath that they believe the contents of ſuch notice to be true, and entering into a recognizance of 20 l. each to produce

evidence of the offence,) enter into a recognizance of 30l. to profecute with effect ſuch perſon at the next ſeſſions or aſſizes, as to the juſtices ſhall ſeem meet: and on the conſtable entering into ſuch recognizance, the juſtice ſhall iſſue his warrant for bringing the accuſed perſons before him, and ſhall bind them over to appear at the ſaid ſeſſions or aſſizes, and ſhall alſo, if he thinks fit, demand and take ſurety for their good behaviour in the mean time. *ſ.* 5, 6.

And if the conſtable ſhall neglect or refuſe, upon ſuch notice, to go before a juſtice, or to enter into recognizance, or ſhall be wilfully negligent in carrying on the proſecution, he ſhall forfeit 20l. to each of the ſaid inhabitants. *ſ.* 7.

And on trial, any perſon may give evidence againſt the defendant, notwithſtanding his being a pariſhioner, or having entered into ſuch recognizance. *ſ.* 9.

And the conſtable ſhall be allowed all the reaſonable expences of the proſecution, to be aſcertained by two juſtices; and ſhall be paid the ſame by the overſeers of the poor; and if ſuch perſon be convicted, the overſeers ſhall alſo forthwith pay 10l. to each of ſuch inhabitants, on pain of forfeiting double to the ſaid perſons. *ſ.* 5.

And no indictment of ſuch offence ſhall be removed by *certiorari*. ſ. 10.

Loſing or winning 10l. or upwards at a time, or 20l. in 24 hours.

By the 9 *An. c.* 14. Any perſon who ſhall *at any time or ſitting*, by playing at cards, dice, tables, or *other game whatſoever*, or by betting on the ſides of ſuch as do play, *loſe* to any one or more perſons ſo playing or betting in the whole the ſum or value of 10l. and ſhall pay or deliver the ſame, or any part thereof; the perſon ſo loſing and paying or delivering the ſame, ſhall be at liberty in three months to ſue for and recover the ſame with coſts in any court of record; and if he ſhall not ſue in three months, it ſhall be lawful for any perſon to ſue for and recover the ſame and treble value, with coſts; half to ſuch perſon who ſhall ſue, and half to the poor. *ſ.* 2.

And every perſon who ſhall be ſo liable to be ſued for the ſame, ſhall be obliged and compellable to anſwer on oath ſuch bill as ſhall be preferred againſt him, for diſcovering the ſum of money or other thing ſo won. 9 *An. c.* 14. *ſ.* 3. 18 *G.* 2. *c.* 34. *ſ.* 3.

At any time or ſitting] *M.* 19 *G.* 3. *Bones* and *Booth.* On a motion for a new trial, *Perryn* baron reported from the

the laſt *Briſtol* aſſizes, that the action was brought to recover back 14 guineas won by gaming, upon the ſtatute of 9 *An.* The play was at a coffeehouſe in *Briſtol.* They played at all-fours for 2 guineas a-game, from Monday evening to Tueſday evening, without any interruption, except for an hour or two at dinner, but the plaintiff and defendant never parted company. It was inſiſted at the trial, that this was not won at any *one* ſitting, ſo as to fall within the ſtatute, becauſe the dinner had intervened. But the judge thought otherwiſe: however, the jury found a verdict for the defendant, much to the diſſatisfaction of the judge. On ſhewing cauſe it was inſiſted, that a new trial in an action for a penalty was unprecedented: And that as both parties were gamblers, neither was entitled to any favour or indulgence from the court.—*Gould* J. (in the abſence of *De Grey* Ch. J.) was clearly for granting a new trial, the verdict being manifeſtly contrary to evidence. The ſtatute (with reſpect to the party loſing) is *remedial*, not *penal.* He is to recover back his money, and to that end the 3d ſection of the ſtatute allows a bill in equity, for a diſcovery; which plainly ſhews that it was not conſidered as a penal ſtatute. Had this been a proceeding on that branch of the ſtatute, which inflicts pillory or other corporal puniſhment, it had been otherwiſe.—*Blackſtone* J. of the ſame opinion. The ſtatute makes the winning of 10l. at one *time* or *ſitting*, a nullity; and therefore gives the loſer an action to recover back what ſtill properly continues to be his own money. To loſe 10l. at one *time*, is to loſe it by a ſingle ſtake or bet; to loſe at one *ſitting* is to loſe it in a courſe of play where the company never parts, though the perſon may not be actually gaming the whole time.—*Nares* J. of the ſame opinion. The ſtatute is *remedial* where the action is brought by the party injured, but *penal* where brought by a common informer. And the rule was made abſolute for a new trial. *Black. Rep.* 1226.

Or other game whatſoever] *M.* 15 *G.* 2. *Goodburn* and *Marley.* It was determined, that *horſe-races* are within theſe general words. *Str.* 1159. So alſo in the caſe of *Blaxton* and *Pye*, *E.* 6 *G.* 3. 2 *Wilſon*, 309.

And in the caſe of *Lynall* and *Longbothom*, *M.* 30 *G.* 2. it was admitted on all hands that a *foot-race* alſo is within the ſtatute, and that a footman running againſt time is a foot-race; but in this caſe, for a flaw in the declaration

in not laying the fact close enough to the words of the ſtatute, the defendant had judgment. 2 *Wilſ.* 36.

In the caſe of *Clayton* and *Jennings*, *E.* 10 *G.* 3. On an action for 5 guineas won by betting at a horſe race, it appeared that the bet was 10 guineas by the plaintiff, to 5 by the defendant. The plaintiff won, and obtained a verdict. It was moved in arreſt of judgment, that there was no mutuality in the wager; for as by reaſon of the ſtatute the defendant could not have recovered the 10 guineas, therefore the plaintiff ſhall not now recover the five. And of that opinion was the court. And *Aſton* J. mentioned the caſe of *Connor* and *Quick* in the king's bench about ten years before, when the court took a diſtinction between running a horſe for 50 l. which was lawful, and betting on the ſide of the horſe which was not ſo. And in the preſent caſe, by the opinion of the whole court, judgment was arreſted. *Black. Rep.* 706.

By the ſame ſtatute of the 9 *An. c.* 14. If any perſon ſhall, at any one time or ſitting, *win* of any one or more perſon or perſons, above the ſum or value of 10 l.; he ſhall upon conviction on indictment or information, forfeit five times the value of the ſum of money or other things ſo won, to be recovered by ſuch perſon as ſhall ſue for the ſame. *ſ.* 5.

And by the 18 *G.* 2. *c.* 34. If any perſon ſhall *win* or *loſe* at play, or by betting, at any one time, the ſum or value of 10 l. or within the ſpace of 24 hours the ſum or value of 20 l.; he ſhall be liable to be indicted for ſuch offence, in ſix months, either in the king's bench or at the aſſizes; and being convicted, ſhall be fined five times the value of the ſum won or loſt, which (after ſuch charges as the court ſhall judge reaſonable, allowed thereout to the proſecutor and evidence) ſhall go to the poor. *ſ.* 8.

And if any offender ſhall diſcover another offender, ſo that he be convicted, the diſcoverer ſhall be diſcharged from all penalties by reaſon of ſuch offence, if not before convicted thereof, and ſhall be admitted as an evidence to prove the ſame. *ſ.* 9.

But nothing in this act ſhall repeal the aforeſaid act of 9 *An.* *Id. ſ.* 10.

Loſing above 100 l. at a time.

If any perſon ſhall play at cards, dice, tables, tennis, bowls, kittles, ſhovelboard, or any other paſtime or game whatſoever, (or than for ready money,) or bet on the ſides of ſuch as ſhall play, and ſhall loſe any ſum or other thing, exceeding 100 l. at any one time or meeting, upon ticket,

ticket, or credit, or otherwiſe, and ſhall not pay down the ſame at the time when he ſhall loſe the ſame, in ſuch caſe he ſhall not be bound to make it good, but the contract for the ſame, and for every part thereof, and all aſſurances and ſecurities for the ſame ſhall be void; and the winner ſhall forfeit treble value of all ſuch ſums as he ſhall ſo win above 100l. half to the king, and half to him that ſhall ſue in one year in any of the courts of record at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 3.

In the caſe of *Humphries* and *Rigby*, *M.* 1698. A bill was brought, to be relieved againſt a bond for money won at all-fours. The plaintiff was a diſtiller, and the defendant a tapſter at a bowling-green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was Jack, ſeveral times together; and being an unreaſonable ſum for ſuch perſons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, altho' this caſe was not within the ſtatute, the bond being for leſs than 100l. For equity always relieved before the ſtatute, where any fraud appeared. 2 *Abr. Eq. Caſ.* 184.

Securities to be void.

And all notes, bills, bonds, judgments, mortgages, or other ſecurities, where the whole or any part of the conſideration ſhall be for money or any other valuable thing won by playing at cards, dice, tables, tennis, bowls, or other game whatſoever; or by betting on the ſides of ſuch as do game; or for the reimburſing or repaying any money knowingly lent or advanced, at the time and place of ſuch play, to any perſon ſo gaming or betting, or that ſhall (during ſuch play) ſo play or bett, —ſhall be void: And where ſuch ſecurities ſhall be of lands, or ſuch as incumber or affect the ſame; they ſhall enure and be to the ſole uſe and benefit of, and devolve upon ſuch perſon as might have ſuch lands, in caſe the ſaid grantor, or perſon ſo incumbring the ſame had been dead: And all conveyances to hinder them from devolving on ſuch perſon ſhall be void. 9 *An. c.* 14. *ſ.* 1.

T. 14 *G.* 2. *Bowyer* v. *Bampton.* Upon a caſe ſtated at *niſi prius* in an action by the plaintiff as indorſee of ſeveral promiſſory notes, it appeared that the notes were given by the defendant to one *Church* for money by him knowingly advanced to the defendant to game with at dice, and that *Church* indorſed them to the plaintiff for a full and valuable conſideration, and that the plaintiff was not privy to, or had any notice, that any part of the money for which the notes were given had been lent for the purpoſe of gaming.

Upon

Upon this a queſtion aroſe on the above ſtat. of 9 *An.* *c.* 14. whether the plaintiff could maintain this action, and the court were of opinion he could not; for it is making it of ſome uſe to the lender if he can pay his own debts with it, and will be a means to evade the act. And though it will be ſome inconvenience to an innocent man, yet that will not be a balance to thoſe on the other ſide. And the plaintiff is not without remedy, for he may ſue *Church* on his indorſement. *Str.* 1155.

Securities] *H.* 19 *G.* 2. *Barjeau* and *Walmſley.* The plaintiff and defendant gamed together, at toſſing up for five guineas at a time. And the plaintiff having won all the defendant's ready money lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was inſiſted for the defendant, that by the 9 *An.* *c.* 14. the plaintiff could maintain no action; for by that act, all *ſecurities* for money lent to game with ſhall be void; and the borrowing on an agreement to pay is *a ſecurity.* But *Lee* Ch. J. held that this was not a caſe within the act, for there is not the word *contract*, as in the ſtatute of uſury; and the word *ſecurities*, as it ſtands in this act, muſt mean laſting liens upon the eſtate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written ſecurities. Wherefore the plaintiff obtained a verdict for 126l. *Str.* 1249.

In the caſe of *Rawdon* and *Shadwell*, *Apr.* 23, 1755. A bill was brought by the plaintiff for an injunction, and that the defendant might deliver up the plaintiff's bond for 1150l. for money loſt at play, and might refund a ſum of 150l. paid by the plaintiff in part of the ſaid bond. It appeared, that the plaintiff was a lieutenant, and the defendant a captain in Cotterel's regiment; and about 14 years ago, being quartered at Leeds in Yorkſhire, the defendant won of the plaintiff in one evening the ſum of 1150l. The plaintiff was under age; and being ſo, gave a bond for the money to the defendant; and afterwards, when of age, paid 150l. in part. It was inſiſted for the plaintiff, that the ſecurities by the ſtatute of the 16 *C.* 2. were totally void, and ought to be delivered up; that the property of an infant in money loſt at play is not altered, and therefore trover would lie; and the ſtatute of the 9 *An.* was mentioned, and a caſe in 2 *Mod.* 91. For the defendant, it was urged, that the plaintiff on the ſame

evening won of another in the ſame company, to wit, the ſurgeon of the regiment, a larger ſum than the 1150l. which has been paid by him. That fair gaming is not *malum in ſe*. It is only prohibited *ſub modo*. That the caſe cited was of money loſt with falſe dice, which the court takes cognizance of as a cheat. That the ſtatute of *An.* gives the court juriſdiction only as to a diſcovery. That as to the 150l. it was paid after he came of age; and if the court ſhould order the defendant to refund at the diſtance of 14 years, it would occaſion an infinite number of applications. That the ſtatute of 16 *C.* 2. gives no remedy to recover money already paid. That there has been too long an acquieſcence. That money paid, even in caſes of bribery and corruption, cannot be recovered at law. That the ſtatute of *An.* has directed an action within three months, for money loſt and paid at play.——The lord chancellor ſaid, the decree he ſhould make was not founded on any imputation on the character of the defendant, who had put in a very candid anſwer. But this is a breach of the law, from a falſe principle of honour. And he was of opinion, that the plaintiff was entitled to the whole relief prayed; that a party may come into this court to have a void ſecurity delivered up; that refunding the money is of courſe, as the ſtatute has made the ſecurity void to all intents and purpoſes.

T. 11 *G.* 3. Earl of *March* and *Pigot*. The cauſe was on a contract made at *Newmarket*. A wager was originally propoſed between young Mr. *Pigot* the defendant, and young Mr. *Codrington*, to run their fathers (to uſe the phraſe of that place) each againſt the other. Sir *William Codrington*, the father of Mr. *Codrington*, was then a little turned of fifty; Mr. *Pigot*'s father was upwards of ſeventy. Lord *Oſſory* computed the chances, in the proportion of 500 to 1600 guineas, according to the ages of their reſpective fathers. Mr. *Codrington* thought the computation was made too much in his diſavour. Whereupon lord *March* agreed to ſtand in Mr. *Codrington*'s place. And reciprocal notes were accordingly given between the earl and Mr. *Pigot*. It happened, that at the time of this tranſaction, Mr. *Pigot*'s father was dead, unknown and unſuſpected by any of the parties. He died in *Shropſhire*, 150 miles from *London*, at two of the clock in the morning of the ſame day, on which this bet was made at *Newmarket* after dinner. On the trial, the jury gave a verdict for the plaintiff, with 525l. damages. It was moved for a new

a new trial. The objection was, That the contract was void, as being without any conſideration. For there was no poſſibility of the defendant's winning, (his father being then actually dead,) and therefore he ought not to loſe: It was a contract *in futuro*, manifeſtly made upon a ſuppoſition of a then future contingency.——By L. *Mansfield* Ch. J.: The queſtion is, What the parties really meant? The material contingency was, Which of theſe two young heirs ſhould firſt come to his father's eſtate? It was not known that the father of either of them was then dead. Their lives, their healths, were neither warranted nor excepted. It was equal to both of them, whether one of their fathers ſhould be then ſick or dead. All the circumſtances ſhew, that if it had been then thought of, it would not have made any difference in the bet; and there was no reaſon to preſume that they would have excepted it. The intention was, that he who firſt came to his eſtate ſhould pay this ſum of money to the other who ſtood in need of it. And the court unanimouſly diſcharged the rule for a new trial. *Burr. Manſf.* 2802.

Perſons ſuſpected of ſupporting themſelves by gaming.

And any two juſtices may cauſe to come, or to be brought before them, every perſon whom they ſhall have juſt cauſe to ſuſpect to have no viſible eſtate, profeſſion, or calling, to maintain themſelves by, but do for the moſt part ſupport themſelves by gaming; and if ſuch perſon ſhall not make it appear to the ſaid juſtices, that the principal part of his expences is not maintained by gaming, they ſhall require of him ſufficient ſureties for his good behaviour for twelve months, and in default of his finding ſuch ſecurities, ſhall commit him to the common gaol, until he ſhall find ſuch ſecurities as aforeſaid. 9 *An. c.* 14. *ſ.* 6.

And if he ſhall, during the time for which he ſhall be bound, at any one time or ſitting, play or bet for any ſums or other thing exceeding in the whole the value of 20*s.*; ſuch playing ſhall be deemed a forfeiture of the recognizance. *ſ.* 7.

Cheating

If any perſon ſhall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, ſhovelboard; or by cock-fightings, horſe-races, dog-matches, foot-races, or other paſtimes or games; or by bearing a ſhare in the ſtakes; or by betting on the ſides of ſuch as ſhall play, act, ride, or run as aforeſaid,—win any ſum or other valuable thing; he ſhall forfeit treble the value, half to the king, and half to the party grieved, (if he ſhall ſue in ſix months,) otherwiſe to any perſon who

ſhall

ſhall ſue in one year next after the ſaid ſix months, in any of the courts of record at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 2.

And by the 9 *An. c.* 14. In any perſon ſhall by any fraud or ſhift, couſenage, circumvention, deceit, or unlawful device, or ill practice whatſoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforeſaid, or bearing a ſhare in the ſtakes, or betting on the ſides of ſuch as do play, win any ſum of money or other valuable thing, and ſhall be convicted thereof upon indictment or information; he ſhall forfeit five times the value of ſuch money or other thing ſo won, and ſhall be deemed infamous, and ſuffer ſuch corporal puniſhment as in caſes of wilful perjury; and ſuch penalty to be recovered by ſuch perſon as ſhall ſue for the ſame, by ſuch action as aforeſaid. *ſ.* 5.

T. 9 *G.* 2. *K.* and *Luckup.* The defendant was convicted on an information upon this act, which ſays, that he ſhall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine ſhould be ſet upon the defendant, if he refuſed to ſpeak with the proſecutor.——But by the court: All the judgment that we can give is, *that he is convicted*; and a new action muſt be brought upon that judgment for the forfeiture, which was thought ſufficient to deter the offenders. In the caſe of recuſancy, there is no other judgment. And the defendant was diſcharged, without any fine or coſts. *Str.* 1048.

Quarrelling.

And for the preventing ſuch quarrels as may happen on the account of gaming; if any perſon ſhall aſſault and beat, or challenge to fight, any other perſon whatſoever, on account of any money won by gaming, playing, or betting, at any the games aforeſaid, he ſhall on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and perſonal eſtate whatſoever, and ſhall alſo ſuffer impriſonment without bail or mainprize, in the common gaol of the county where the conviction ſhall be had, during the term of two years. 9 *An. c.* 14. *ſ.* 8.

Royal palaces excepted.

It is generally provided by the ſeveral ſtatutes, that nothing therein ſhall hinder any perſon from playing at any the games aforeſaid, within any of the king's royal palaces, where he ſhall then reſide.

Lottery a nuſance.

By the 10 & 11 *W. c.* 17. All lotteries are declared to be publick nuſances; and all grants, patents, and licences, for ſuch lotteries, to be againſt law. *ſ.* 1.

Keeping or playing at a lottery.

No perſon ſhall expoſe to be played, drawn, or thrown at, or ſhall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatſoever; and every perſon who ſhall expoſe to be played, drawn, or thrown at, any ſuch lottery, play, or device, ſhall forfeit 500l. one third to the king, one third to the poor, and one third with double coſts to him that ſhall ſue in the courts at *Weſtminſter*; and the offenders ſhall likewiſe be proſecuted as common rogues, according to the ſtatutes in that caſe made and provided. 10 & 11 *W.* *c.* 17. *ſ.* 2.

And every perſon who ſhall play, throw, or draw at any ſuch lottery, play, or device, ſhall forfeit 20l. in like manner. *ſ.* 3.

Power of the juſtices.

And all juſtices of the peace, mayors, conſtables and other civil officers ſhall uſe their utmoſt endeavours to prevent the drawing of any ſuch unlawful lottery, by all lawful ways and means; and every perſon who ſhall ſet up, or by writing or printing publiſh the ſetting up any ſuch unlawful lottery, with intent to have ſuch lottery drawn, ſhall forfeit 100l. one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue in the courts at *Weſtminſter*. 9 *An.* *c.* 6. *ſ.* 56.

Inſurances.

Every perſon who ſhall keep any office or place, for making inſurances on marriages, births, chriſtenings, or ſervice, or any other office or place under the denominations of ſales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of ſmall ſums of money, ſhall forfeit 500l.; one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue. And every printer, or other perſon, who ſhall by writing or printing publiſh the ſetting up or keeping any ſuch office or place, ſhall forfeit 100l. in like manner. 10 *An.* *c.* 26. *ſ.* 109.

Sales of lands or goods; and chances in publick lotteries.

Every perſon who ſhall keep any office or place, under the denomination of ſales of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things, for the improvement of ſmall ſums of money; or ſhall ſell or expoſe to ſale the ſame or any of them, by way of lottery, or by lots, tickets, numbers or figures; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums of money by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by the chances of the prizes in ſome publick lottery; or ſhall deliver out tickets, to the perſons

advancing

advancing ſuch ſums, to entitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall make, print, or publiſh, any propoſal or ſcheme of the like nature, under any denomination whatſoever, —— and ſhall be thereof convicted, on oath of one witneſs, by two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by any former act made againſt private lotteries, forfeit 500 l. one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs and ſale by warrant of ſuch juſtices and ſhall alſo by ſuch juſtices be committed to the county gaol without bail for one whole year, and from thence till the ſaid ſum of 500 l. ſhall be paid: Provided that perſons aggrieved may appeal to the next quarter ſeſſions. And every perſon who ſhall be adventurer in, or any way contribute on the account of any ſuch ſales, lotteries, propoſals, or ſchemes, ſhall forfeit double the ſum contributed, with coſts, half to the king, and half to him who ſhall ſue in the courts at *Weſtminſter*. 8 *G. c.* 2. *ſ.* 36, 37.

And by the 12 *G.* 2. *c.* 28. If any perſon ſhall erect, ſet up, continue, or keep, any office or place, under the denomination of a ſale of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards, or dice; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by chances of the prizes in ſome public lottery eſtabliſhed by act of parliament, or ſhall deliver out tickets to perſons advancing ſuch ſums, to entitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall expoſe to ſale any houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, or other goods, by any game, method, or device whatſoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatſoever, ſhall forfeit 200 l. *ſ.* 1.

Moreover, every ſuch ſale of houſes, lands, advowſons, preſentations, plate, jewels, ſhips, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, ſhall be void; and the ſame being expoſed to ſale in manner aforeſaid, ſhall be forfeited

Keeping or playing at a lottery.

No perſon ſhall expoſe to be played, drawn, or thrown at, or ſhall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatſoever; and every perſon who ſhall expoſe to be played, drawn, or thrown at, any ſuch lottery, play, or device, ſhall forfeit 500l. one third to the king, one third to the poor, and one third with double coſts to him that ſhall ſue in the courts at *Weſtminſter*; and the offenders ſhall likewiſe be proſecuted as common rogues, according to the ſtatutes in that caſe made and provided. 10 & 11 *W.* *c.* 17. *ſ.* 2.

And every perſon who ſhall play, throw, or draw at any ſuch lottery, play, or device, ſhall forfeit 20l. in like manner. *ſ.* 3.

Power of the juſtices.

And all juſtices of the peace, mayors, conſtables and other civil officers ſhall uſe their utmoſt endeavours to prevent the drawing of any ſuch unlawful lottery, by all lawful ways and means; and every perſon who ſhall ſet up, or by writing or printing publiſh the ſetting up any ſuch unlawful lottery, with intent to have ſuch lottery drawn, ſhall forfeit 100l. one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue in the courts at *Weſtminſter*. 9 *An.* *c.* 6. *ſ.* 56.

Inſurances.

Every perſon who ſhall keep any office or place, for making inſurances on marriages, births, chriſtenings, or ſervice, or any other office or place under the denominations of ſales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of ſmall ſums of money, ſhall forfeit 500l.; one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue. And every printer, or other perſon, who ſhall by writing or printing publiſh the ſetting up or keeping any ſuch office or place, ſhall forfeit 100l. in like manner. 10 *An.* *c.* 26. *ſ.* 109.

Sales of lands or goods; and chances in publick lotteries.

Every perſon who ſhall keep any office or place, under the denomination of ſales of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things, for the improvement of ſmall ſums of money; or ſhall ſell or expoſe to ſale the ſame or any of them, by way of lottery, or by lots, tickets, numbers or figures; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums of money by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by the chances of the prizes in ſome publick lottery; or ſhall deliver out tickets, to the perſons advancing

advancing ſuch ſums, to entitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall make, print, or publiſh, any propoſal or ſcheme of the like nature, under any denomination whatſoever, —— and ſhall be thereof convicted, on oath of one witneſs, by two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by any former act made againſt private lotteries, forfeit 500 l. one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs and ſale by warrant of ſuch juſtices and ſhall alſo by ſuch juſtices be committed to the county gaol without bail for one whole year, and from thence till the ſaid ſum of 500 l. ſhall be paid: Provided that perſons aggrieved may appeal to the next quarter ſeſſions. And every perſon who ſhall be adventurer in, or any way contribute on the account of any ſuch ſales, lotteries, propoſals, or ſchemes, ſhall forfeit double the ſum contributed, with coſts, half to the king, and half to him who ſhall ſue in the courts at *Weſtminſter*. 8 *G. c.* 2. *ſ.* 36, 37.

And by the 12 *G.* 2. *c.* 28. If any perſon ſhall erect, ſet up, continue, or keep, any office or place, under the denomination of a ſale of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards, or dice; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by chances of the prizes in ſome public lottery eſtabliſhed by act of parliament, or ſhall deliver out tickets to perſons advancing ſuch ſums, to entitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall expoſe to ſale any houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, or other goods, by any game, method, or device whatſoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatſoever, ſhall forfeit 200 l. *ſ.* 1.

Moreover, every ſuch ſale of houſes, lands, advowſons, preſentations, plate, jewels, ſhips, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, ſhall be void; and the ſame being expoſed to ſale in manner aforeſaid, ſhall be forfeited

forfeited to ſuch perſon as ſhall ſue for the ſame in any court of record, or at the aſſizes. 12 *G.* 2. *c.* 28. *ſ.* 4.

And finally, every perſon who ſhall be an adventurer in any of the ſaid games, lotteries, or ſales, ſhall forfeit 50 l. in like manner. *Id. ſ.* 3.

Keeping a gaming-houſe.

And by 18 *G.* 2. *c.* 34. No perſon ſhall keep any houſe or place for playing, or permit any perſon within ſuch houſe to play at any prohibited game, with cards or dice, under the penalties of 12 *G.* 2. *c.* 28. *ſ.* 1.

Perſons gaming.

And every perſon who ſhall be an adventurer in any of the ſaid games, lotteries, or ſales, ſhall forfeit 50 l. 12 *G.* 2. *c.* 28. *ſ.* 3.

Power of the juſtices.

Which penalties may be recovered before one juſtice, or mayor, who, on confeſſion, view, or oath of one witneſs, may convict ſuch offender, and levy ſuch penalty by diſtreſs, to be applied, after deducting the charges, one third to the informer, and two thirds to the poor; and for want of ſufficient diſtreſs, and in caſe ſuch offender do not pay or ſecure the ſame, he may be committed to gaol, for not exceeding ſix months. *ſ.* 1. 8.

Appeal.

Perſons aggrieved may appeal to the next ſeſſions, giving reaſonable notice to the proſecutor, and entering into recognizance before a juſtice with two ſureties, to try ſuch appeal at ſuch ſeſſions, who ſhall finally determine the ſame; and in caſe ſuch conviction or judgment be affirmed, the defendant ſhall have treble coſts. *ſ.* 5.

Certiorari.

And no ſuch conviction or judgment ſhall be ſet aſide for want of form in caſe the facts be proved; nor be removable by *certiorari* until judgment be given at ſuch ſeſſions. *ſ.* 6.

Witneſſes.

And any perſon may be ſummoned as a witneſs (other than the party accuſed) notwithſtanding his having played, betted, or ſtaked at any prohibited game; and in caſe he neglect to appear, or refuſe to give evidence, he ſhall forfeit 50 l. to be levied by diſtreſs by warrant of the juſtice iſſuing ſuch ſummons: and for want of ſufficient diſtreſs, he ſhall be committed to gaol for ſix months. 18 *G.* 2. *c.* 34. *ſ.* 4, 5.

Reſtrictions by 27 G. 3. c. 1.

But by 27 *G.* 3. *c* 1. No pecuniary penalty incurred by any perſon offending againſt ſuch parts of the acts, 8 *G.* *c.* 2. and 12 *G.* 2. *c.* 28. as touch or concern *lotteries* ſhall be recoverable before juſtices of the peace; but may be ſued for in the courts at *Weſtminſter*, half to the king, and half with coſts to him who ſhall ſue. *ſ.* 2.

As touch or concern lotteries] In the caſe of *K.* v. *Liſton*, *T.* 33 *G.* 3. it was determined, that the above ſtatute only extends to *ſtate lotteries*, and does not repeal the ſummary juriſdiction

juriſdiction of magiſtrates over games of chance, or lotteries prohibited by 12 *G.* 2. *c.* 28. *Durnf.* and *Eaſt*, 5 V. 338.

And moreover by 27 *G.* 3. *c.* 1. All perſons who ſhall publickly or privately ſet up, or keep, by himſelf, or any other, any office or place for buying, ſelling, or dealing in *Lottery Tickets*, or ſhares thereof, without being licenſed; or ſhall ſell the chance of any ſuch ticket, or ſhare thereof, for a day or part of a day, or leſs time than the whole time of drawing in ſuch lottery then to come; or inſure, for or againſt the drawing of any ſuch ticket; or ſhall receive any money or goods in conſideration of any agreement or promiſe to repay any money, or to deliver the ſame; or any plate, jewels, or other goods whatſoever, if any ſuch ticket ſhall prove fortunate or unfortunate; or upon any other chance, event, or contingency relative to the drawing any ſuch tickets, whether as to the time of their being drawn, or otherwiſe; *ſhall be deemed rogues and vagabonds* within the meaning of the 17 *G.* 2. *c.* 5. and ſhall be puniſhed accordingly. And ſuch offenders (not having been before ſued for the ſame offence) on proof made of the offence as by the ſaid act is directed, ſhall be ſent to the houſe of correction until the next ſeſſions: and the juſtices at ſuch ſeſſions ſhall examine the cauſe, and proceed therein, as by the ſaid act of 17 *G.* 2. is directed. And all juſtices, mayors, conſtables, and other officers, are required to uſe their utmoſt endeavours, to prevent the committing any of the offences aforeſaid, by all lawful means, and they ſhall be indemnified. *ſ.* 2.

Perſons dealing in lottery tickets to be puniſhed as rogues and vagabonds.

But no perſon ſhall be liable to be proſecuted, by action for the recovery of a pecuniary penalty, and by impriſonment as a rogue and vagabond. *ſ.* 7.

And all powers, authorities, rules, directions, puniſhments, and proviſions preſcribed and inflicted by the ſaid act of 17 *G.* 2. not hereby altered, ſhall be applied in carrying this act into execution, in relation to the perſons hereby declared rogues and vagabonds. *ſ.* 3.

By 34 *G.* 3. *c.* 40. On complaint upon oath before one juſtice, of any offence committed againſt the act of 27 *G.* 3. *c.* 1. for ſuppreſſing unlawful lotteries in any houſe or place within the juriſdiction of ſuch juſtice, whereby any offenders may be liable to be puniſhed as rogues and vagabonds, ſuch juſtice, by warrant, may empower any perſon employed by the commiſſioners of the ſtamp duties in the execution of the acts for the regulating of lotteries, by day or by night, (but if in the night in the preſence

Doors may be broken open to ſeize ſuch perſons.

preſence of a conſtable, who is required to be aiding and aſſiſting therein,) to break open the doors of any part of ſuch houſe or place where ſuch offence ſhall have been committed, and to enter and ſeize all ſuch offenders or other perſons, who ſhall have knowingly aſſiſted or been any ways concerned in committing ſuch offence, and convey them before any juſtice of the county, city, or place wherein ſuch perſon ſhall be ſo apprehended, to be dealt with according to law; and all perſons who ſhall have been diſcovered in ſuch houſe or place, knowingly aiding, aſſiſting, or any ways concerned with ſuch offenders in carrying on any ſuch tranſactions, ſhall be deemed rogues and vagabonds, and puniſhed accordingly: and the officer having the execution of ſuch warrant, or perſon acting in his aid or aſſiſtance, may arreſt any ſuch perſons ſo diſcovered in ſuch houſe or place, and convey them before a juſtice as aforeſaid. And if any perſon ſhall forcibly obſtruct or hinder any ſuch officer, or others acting in his aid or aſſiſtance, in the execution of their duty herein, he ſhall be deemed an offender againſt law, and the court before whom he ſhall be tried and convicted may order him to be fined, impriſoned, and publickly whipped, as in their diſcretion ſhall be thought fit. And all perſons, although not diſcovered in ſuch houſe or place as aforeſaid, who ſhall employ any perſon in carrying on any of the tranſactions aforeſaid, or be aiding or aſſiſting therein, ſhall be deemed rogues and vagabonds, and puniſhed accordingly. *ſ.* 37.

Offenders adjudged rogues and vagabonds may be committed.

And if any perſon ſhall be brought before any two juſtices, and ſhall be convicted of any offence againſt the ſaid act of 27 *G.* 3. *c.* 1. or of this act, whereby he ſhall be adjudged a rogue and vagabond, ſuch juſtices may order him to be ſent to the houſe of correction for any time not exceeding ſix, nor leſs than one calendar month, and until the final period of the drawing of the lottery in reſpect whereof ſuch offence ſhall be committed; and ſuch proceedings ſhall not be ſubject to appeal, nor removeable by *certiorari*. *ſ.* 40.

Ace of hearts, faro, baſſet, and hazard.

The game of ace of hearts, faro, baſſet, and hazard, ſhall be deemed games, or lotteries by cards or dice; and every perſon who ſhall ſet up, or keep theſe games, ſhall be liable to all the abovementioned penalties, for ſetting up or keeping any the games or lotteries in this act mentioned. 12 *G.* 2. *c.* 28. *ſ.* 2.

And every perſon who ſhall play, ſet at ſtake, or punt at any of the ſaid games, ſhall forfeit 50*l.* in like manner. *ſ.* 3.

Alſo

Alſo the game of paſſage, and every other game with one or more die or dice, or with any other inſtrument, engine, or device in the nature of dice, having one or more figures or numbers thereon, (back-gammon, and the other games played with the back-gammon tables, only excepted,) ſhall be deemed games or lotteries by dice, within the ſaid act of 12 *G.* 2. *c.* 28.—13 *G.* 2. *c.* 19. *ſ.* 9. Paſſage.

Alſo by the 18 *G.* 2. *c.* 34. No perſon ſhall keep any houſe, room, or place for playing, or ſuffer any perſon within ſuch place to play at roly-poly, or any other game, with cards or dice already prohibited by the laws of this realm: and if any perſon ſhall keep ſuch houſe, or ſuffer any perſon to play at roly-poly, or other game with cards or dice prohibited by law, he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 *G.* 2. *c.* 28. 18 *G.* 2. *c.* 34. *ſ.* 1. Roly-poly.

And if any perſon ſhall play at roly-poly, or any game with cards or dice prohibited by law; he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 *G.* 2.—18 *G.* 2. *c.* 34. *ſ.* 2.

If any perſon ſhall, by colour of any grant from any foreign prince or ſtate, ſet up any lottery, or undertaking in the nature of a lottery, under any denomination whatſoever; or ſhall make, print, or publiſh any propoſal for any ſuch lottery or undertaking; or ſhall ſell or diſpoſe of any ticket in any foreign lottery; and ſhall be convicted thereof, on oath of one witneſs, before two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall over and above any penalties by former acts againſt unlawful lotteries, forfeit 200l. one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo by them be committed to the county gaol for one year, and from thence till the ſaid ſum of 200l. be paid: Provided, that perſons aggrieved may appeal to the next quarter ſeſſions. 9 *G.* *c.* 19. *ſ.* 4, 5. Foreign lotteries.

And by the 6 *G.* 2. *c.* 35. If any perſon ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any claſs, part, or diviſion thereof, or in any undertaking in the nature of a lottery; or ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or ſhall receive any money for any ſuch ticket, receipt, chance, or number, or in conſideration of any money to be paid in caſe any ticket or number in any

foreign or pretended foreign lottery, or any claſs, part, or diviſion thereof, ſhall prove fortunate; and ſhall be convicted thereof in the courts at *Weſtminſter*, or on the oath of one witneſs before two juſtices where the offence ſhall be committed, or the offender ſhall be found; he ſhall forfeit 200l. one third to the king, one third to the informer, and one third to the poor; the ſame (in caſe of conviction before the juſtices) to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo be committed to the common gaol for a year, and from thence till the 200l. be paid; provided, that perſons aggrieved may appeal to the next quarter ſeſſions. *ſ.* 29, 30.

Gaol and gaoler.

For breaking gaol. See Priſon breaking.

I. Building and repairing of gaols.
II. Who ſhall have the keeping of gaols.
III. Gaoler ſhall receive criminals.
IV. Selling of ſtrong liquors in gaols.
V. How priſoners may be ſet on work.
VI. How they ſhall be maintained.
VII. Regulations to be obſerved in gaols, and in the keeping and reſtraining of priſoners.
VIII. Gaolers to make returns.
IX. Of clergymen to officiate in gaols.
X. How priſoners ſhall be delivered.
XI. Of gaolers permitting eſcapes.
XII. Concerning debtors.
XIII. Concerning the priſons of the King's Bench *and* Marſhalſea.

I. Building and repairing of gaols.

THE juſtices, or the greater number of them, within the limits of their commiſſion, upon preſentment of the grand jury at the aſſizes (or ſeſſions, 12 *G.* 2. *c.* 29. *ſ.* 13.) of the inſufficiency or inconveniency of the county gaol, may contract with any perſon for the building, finiſhing, or repairing the ſame. 11 & 12 *W.* *c.* 19. *ſ.* 1, 2.

The

The expence thereof to be paid by the treaſurer, out of the general county rate. 12 *G.* 2. *ſ.* 29.

But this ſhall not extend to gaols held by inheritance; nor to charge any perſons in any town or liberty which have common gaols for felons, and commiſſioners of aſſize or gaol delivery, for any aſſeſſment to the making the common gaol for the ſhire. 11 & 12 *W.* *c.* 19. *ſ* 4, 5.

May be rebuilt or enlarged by order of ſeſſions.

By the 24 *G.* 3. *c.* 54. *ſeſſ.* 2. The juſtices at their general quarter ſeſſions, or the major part of them, ſuch major part not being leſs than ſeven, upon preſentment made by the grand jury at the aſſizes, of the inſufficiency, inconveniency, or want of repair of the goal, may contract for the building, repairing, or enlarging the ſame, and the yards, courts, and outlets thereof, and adding ſuch other buildings, and making ſuch conveniencies, as ſhall be adjudged requiſite; or for erecting any new gaol upon any ſcite or ground within any diſtance not exceeding two miles from the ſcite of the old gaol, and in that caſe for the ſelling the old gaol, and the ſcite thereof, and land thereunto belonging or any part thereof, and alſo the materials of the old gaol; the contractors giving ſecurity to the clerk of the peace for performance of the contract. *ſ.* 1.

And the ſaid juſtices after ſuch preſentment made, ſhall, at the next ſeſſions, cauſe notice to be given three times at leaſt, in ſome public paper circulating near the place, of ſuch preſentment having been made, and of their intention to take the ſame into conſideration at the next enſuing or ſome following ſeſſions; and after ſuch conſideration thereof, they ſhall give notice in ſuch paper of their intention of contracting as aforeſaid: And all contracts then made, and orders relating thereto, ſhall be entered in a book by the clerk of the peace, and kept by him to be inſpected by the ſaid juſtices, or any other perſon contributing to the rates of the county, without fee. *ſ.* 2.

Juſtices may build a new gaol in any part of the county.

And the ſaid juſtices may build any new gaol in any part of the county, in caſe (in the preſentment made of the inconvenience of the old gaol,) it be expreſsly preſented, that the place wherein the old gaol is ſituate, is improper, and that the ſaid gaol ought to be removed to ſome other part of the county; and in caſe three-fourths in number of the juſtices aſſembled, at two ſucceſſive quarter ſeſſions (notice having been given three times at leaſt in ſome public newſpaper as aforeſaid, of the time of holding the ſame, and of the place to which ſuch gaol is intended to be removed) ſhall approve of ſuch removal, but not otherwiſe. *ſ.* 3.

To be divided into ſeparate apartments,

And the ſaid juſtices ſhall, as well in the choice of the ground, as in determining upon the plans, purſue ſuch meaſures as ſhall provide ſeparate and diſtinct places of confinement, with dry and airy cells, in which the ſeveral priſoners of the following deſcriptions reſpectively may be confined, as well by day as by night; namely, priſoners convicted of felony, priſoners committed for, or adjudged to be guilty of, miſdemeanors only, and debtors: The males of each claſs to be ſeparated from the females; and a ſeparate place of confinement to be provided for ſuch priſoners as are intended to be examined as witneſſes on behalf of any proſecution of any indictment for felony. And alſo ſeparate infirmaries, or ſick wards, for the men and for the women: And alſo a chapel: And convenient warm and cold baths or tubs, and other things as directed by 14 G. 3. c. 59. and care to be taken that priſoners ſhall not be kept in any apartment under ground. ſ. 4.

Juſtices may purchaſe houſes or lands.

And the ſaid juſtices (after preſentment made as aforeſaid) may purchaſe any houſes or lands, for building, enlarging, and accommodating ſuch gaols, and to direct the ſame to be conveyed to ſuch perſon as they ſhall think fit, in truſt for the purpoſes aforeſaid; and ſuch houſe and lands when added thereto, ſhall be deemed and taken to be a part of ſuch gaol. ſ. 5.

Juſtices are not to be intereſted in contracts,

No juſtice who ſhall under the authority of this act do any matter or thing in the execution thereof, ſhall be capable of having any beneficial intereſt or concern whatſoever, either in his own name, or in the name of any other perſon in truſt for him, in any contract or agreement to be made under the authority of this act; or ſhall for any deſign or plan he may deliver or produce, receive any benefit or emolument whatſoever. ſ. 19.

Accidental damages.

The juſtices in ſeſſions may appoint one or more juſtices to viſit and ſuperintend the gaols, and make report of the ſtate thereof to the court, who may, upon ſuch report, order any ſum not exceeding 200l. in any one year, to be laid out upon the repairs thereof, notwithſtanding ſuch want of repair ſhall not have been preſented by the grand jury. And if it ſhall happen that the gaol, by any breach being made in the ſame, from attempts of priſoners to eſcape, or other caſualties or accidents, ſhall be rendered unſafe for the cuſtody of the priſoners therein confined, between the ſeveral times of holding the ſeſſions, one or more juſtice may order the damage occaſioned thereby to be immediately ſo far repaired as may be ſufficient for the ſafe cuſtody of the priſoners, and upon report thereof

thereof to the ſeſſions, they may order payment for the ſame. *ſ.* 7.

When the juſtices ſhall think it neceſſary that the priſoners ſhall be removed for the building a new gaol or repairing the old one, on giving ſufficient notice to the ſheriff, it ſhall be lawful for him to remove ſuch priſoners to the houſe of correction, or ſuch other place of confinement, as the ſaid juſtices, with the conſent of ſuch ſheriff, ſhall approve of: And the expence of ſuch removal, and the expence which may be incurred by the ſheriff on account of the ſafe cuſtody of ſuch priſoners, ſhall be paid out of the county rate, and ſuch removal as aforeſaid ſhall not be deemed or taken to be an eſcape. But this ſhall not extend to diſcharge any ſheriff or gaoler for being anſwerable for the actual eſcape of any priſoner in his cuſtody. *ſ.* 6. Priſoners may be removed.

And whereas there are ſeveral perſons confined in county and city gaols under ſentences and orders made by one or more juſtices at their ſeſſions, or otherwiſe, upon convictions in a ſummary way, without the intervention of a jury: It is enacted, that any judge of aſſize, or two juſtices of the peace within whoſe juriſdiction ſuch gaol is ſituate, may remove ſuch perſons to any houſe of correction within the ſame juriſdiction, there to be confined, and to remain in execution of ſuch ſentence or order. 24 *G.* 3. *c.* 56. *ſeſſ.* 2. *ſ.* 12.

And the expence of building, rebuilding, repairing, or enlarging ſuch gaols, and ſuch other neceſſary expences as aforeſaid, ſhall be paid out of the county rate; and when the amount thereof ſhall exceed one half of the amount of the ordinary annual aſſeſſment for the county rate, (to be computed at a medium for the laſt five years preceding,) the juſtices in ſeſſions may borrow on mortgage of the ſaid rates, any ſum not leſs than 50l. nor more than 100l. and may order the intereſt due thereon, and ſo much of the principal ſum as ſhall be equal at leaſt to the ſaid intereſt, to be paid off yearly, until the whole thereof ſhall be diſcharged, and an account thereof ſhall be kept in a book to be provided for that purpoſe, which book ſhall be delivered into court at every quarter ſeſſions, and ſhall be inſpected by the juſtices, who ſhall make ſuch orders relating thereto as to them ſhall ſeem meet: Provided that the whole money borrowed be fully paid within 14 years from the time of borrowing the ſame. 24 *G.* 3. *c.* 54. *ſeſſ.* 2. *ſ.* 8, 9, 10, 11. Expences.

Parties refuſing to treat.

And if any perſon intereſted in any houſes or lands which ſhall be deemed neceſſary for the building or enlarging ſuch gaols, ſhall upon notice in writing being given to them, or left at their uſual place of abode, refuſe to treat, or accept the price that ſhall be offered for the ſame, for twenty-one days next after ſuch notice; the juſtices in ſeſſions ſhall order the value thereof to be aſcertained by a jury; who may examine witneſſes upon oath, (to be adminiſtered by a juſtice,) and the verdict of ſuch jury ſhall be filed at the ſeſſions, and ſhall be final and concluſive againſt all perſons whatſoever. *ſ.* 14.

Regulations in 24 G. 3. to be conformed to.

And by 31 *G.* 3. *c.* 46. the rules, orders, and regulations for the ſeparation and claſſing of priſoners, and the ſecuring juſt and humane treatment by gaolers, directed by 24 *G.* 3. *c.* 54. and all other directions contained in the ſaid act, ſhall be exactly conformed to. *ſ.* 6.

Gaolers to deliver a certificate at the Michaelmas ſeſſions yearly.

And by 29 *G.* 3. *c.* 67. Every gaoler ſhall at the *Michaelmas* ſeſſions yearly, deliver a certificate (A) ſigned and verified on oath, either before ſuch court, or in caſe of ſickneſs, inability, or other cauſe, he is unable to attend, then before a juſtice; which certificate ſhall expreſs after each of the proviſions therein enumerated, whether ſuch proviſion is or is not complied with or obſerved within ſuch gaol; and ſuch certificate ſhall be read publickly in open court in the preſence of the grand jury, and entered on the records of the ſeſſions. *ſ.* 1.

And ſuch ſeſſions ſhall thereupon take the ſaid certificate into their conſideration, and may ſummon any perſon named therein to appear before them; and ſhall give ſuch directions, and make ſuch orders relating thereto, as to them ſhall ſeem meet; and may take ſecurity from any perſon concerned for his due performance. *ſ.* 2.

And every gaoler, who ſhall neglect to deliver ſuch certificate, being a county gaoler, ſhall forfeit 50*l.*; if not a county gaoler, 20*l.*; to be recovered in the courts at *Weſtminſter*. *ſ.* 3.

(A) Form of the certificate.

Weſtmorland, to wit. } *AT the general quarter ſeſſions of the peace for the ſaid* —— *holden at* —— *this* —— *day of* —— *in the year of our Lord* —— *the certificate of* —— *in purſuance of the ſtatute in this caſe made and provided, reſpecting the gaol of* ——

22 & 23 *C.* 2. *c.* 20. enacts, That felons and debtors ſhall be kept ſeparate, under penalties upon the ſheriff or gaoler.

24 *G.* 2. *c.* 40. enacts, that

1. No gaoler ſhall ſell, lend, uſe, give away, or ſuffer ſpirituous liquors within any gaol, under a penalty.
2. Copy of the clauſe laſt mentioned, as alſo of two other clauſes reſpecting the ſame, ſhall be hung up in the gaol, under a penalty.

32 *G.* 2. *c.* 28. enacts, that

The clerk of the peace ſhall cauſe a liſt of the fees payable by debtors, and the rules and orders for the government of gaols and priſons, to be hung up in the court where the aſſizes or ſeſſions ſhall be held, and ſend another copy to the gaoler; and the gaoler ſhall cauſe the ſame to be hung up in a conſpicuous place in the ſaid gaol.

13 *G.* 3. *c.* 58. enacts, that

Clergymen may be provided to officiate in gaols.

14 *G.* 3. *c.* 20. enacts, that

Perſons acquitted, or diſcharged upon proclamation for want of proſecution, ſhall be diſcharged immediately, in open court, and without fee.

14 *G.* 3. *c.* 59. enacts, that

1. The walls and ceilings of cells in gaols ſhall be ſcraped and whitewaſhed once in the year at leaſt.
2. That the cells ſhall be kept clean; and
3. That they ſhall be ſupplied with freſh air, by ventilators or otherwiſe.
4. That there ſhall be two rooms ſet apart for the ſick.
5. That a warm and cold bath, or bathing tubs, ſhall be provided.
6. That this act ſhall be hung up in the gaol.
7. That a ſurgeon, or apothecary, ſhall be appointed with a ſalary.

II. Who ſhall have the keeping of gaols.

The gaol itſelf is the king's, but the keeping thereof is incident to the office of the ſheriff, and inſeparable from it; except ſuch gaols whereof any perſons have the keeping by inheritance or ſucceſſion. 14 *Ed.* 3. *ſt.* 1. *c.* 10. 19 *H.* 7. *c.* 10. 2 *Inſt.* 589.

And therefore the ſheriffs ſhall put in ſuch keepers for whom they will anſwer. 14 *Ed.* 3. *ſt.* 1. *c.* 10.

But by the 3 *G.* *c.* 15. *ſ.* 10. None ſhall buy the office of gaoler, on pain of 500 *l.*; half to the king, and half to him that ſhall ſue.

And a gaoler, in fact, is as much puniſhable for a miſdemeanor in his office, as if he were a rightful gaoler. 2 *Haw.* 134.

III. Gaoler ſhall receive criminals.

Gaoler to receive felons.

All felons ſhall be impriſoned in the common gaol, and not elſewhere. 5 *H.* 4. *c.* 10.

And if the gaoler refuſes to receive a felon, or take any thing for receiving him, he ſhall be puniſhed for the ſame by the juſtices of gaol delivery. 4 *Ed.* 3. *c.* 10. *Dalt. c.* 170.

Criminals for ſmall offences may be ſent to the gaol or houſe of correction.

But vagrants and other criminals, offenders, and perſons charged with ſmall offences, may for ſuch offences, or for want of ſureties, be committed either to the common gaol, or houſe of correction, as the juſtices in their judgment ſhall think proper. 6 *G. c.* 19.

IV. Selling of ale, wine, or other ſtrong liquors in gaols.

By the 24 *G.* 2. *c.* 40. No licence ſhall be granted for retailing *ſpirituous liquors* within any gaol or priſon; and if the gaoler ſhall ſell, lend, uſe, or give away, or ſuffer the ſame, (except by way of medicine,) he ſhall forfeit 100l. half to the king, and half with full coſts to him who ſhall ſue. *ſ.* 13.

And any juſtice on information on oath, that ſpirituous liquors are kept or diſpoſed of in ſuch gaol, may enter and ſearch, or iſſue his warrant to ſearch for, and ſeize, and ſtave, and deſtroy the ſame. *ſ.* 14.

And if any perſon ſhall endeavour to bring any ſpirituous liquors into ſuch gaol, the gaoler or his ſervants may apprehend and carry him before a juſtice; and if by the oath of one witneſs or otherwiſe ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine, not exceeding 20l. and not leſs than 10l. as the juſtice ſhall impoſe, to be paid, half to the informer, and half to the poor of ſuch gaol. *ſ.* 15.

And a copy of the three clauſes above, ſhall be hung up in each gaol, on pain of the gaoler forfeiting 40s. to be levied by warrant of one juſtice, on conviction on the oath of one witneſs: And any juſtice may enter and demand a ſight of ſuch copy, and if not ſhewn to him, he ſhall immediately convict ſuch gaoler; one half of the

ſaid penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of ſuch gaol. *ſ.* 16.

Gaolers are not to be licenſed.

And by the 24 *G.* 3. *c.* 54. *ſeſſ.* 2. No gaoler nor any perſon in truſt for him, or employed by him, ſhall ſuffer tippling or gaming in ſuch priſon; nor ſhall ſell, or permit to be ſold, or be capable of being licenſed to ſell, any wine, ale, or other liquors; or have any beneficial intereſt or concern whatſoever in the ſale or diſpoſal of any liquors of any kind: Or in any tap-houſe, tap-room, or tap, on pain of forfeiting 10*l.* for every ſuch offence; to be recovered by diſtreſs, by warrant of two juſtices, upon confeſſion of the party, or upon the information on oath of one witneſs, which penalty ſhall be diſtributed half to the informer, and half to the priſoners confined in ſuch gaol; and for want of ſufficient diſtreſs, the offender to be committed to the houſe of correction for any time not exceeding three months, unleſs ſuch penalty with reaſonable charges ſhall be ſooner paid. *ſ.* 22.

Conviction.

And the conviction may be in the following form or to the like effect:

County of } *BE it remembered, That on the —— of ——*
—— } *in the —— year of the reign of his majeſty ——* A. O. *is convicted before —— of his majeſty's juſtices of the peace for the ſaid county* [or *riding, diviſion, city, town, liberty, or precinct*, as the caſe ſhall be,] *by virtue of an act of parliament made in the 24th year of the reign of his majeſty king* George *the third intitulea* [here ſet forth the title of the act, and offence, and the time when, and place where committed]. *Given*, &c. *ſ.* 23.

Juſtices may allow ſalaries to gaolers.

And the ſaid juſtices in their ſeſſions, or at any ſpecial adjournment thereof held for ſuch expreſs purpoſe, may, if it ſhall appear to them neceſſary or proper, appoint ſalaries or allowances to gaolers, in lieu of the profits which were before derived from the ſale of liquors, as to them ſhall ſeem meet, and order the ſame to be paid out of the county rate, by a certificate of ſuch allowance being ſigned by the chairman of the ſeſſions: But no chairman ſhall ſign ſuch certificate, unleſs notice of ſuch intended application, ſigned by the clerk of the peace, hath been given 14 days at leaſt before the holding of ſuch ſeſſions or adjournment thereof, by two ſeveral advertiſements in ſome newſpaper printed and circulated in ſuch county. *ſ.* 20, 21.

V. How priſoners may be ſet on work.

The juſtices in their general ſeſſions, if they find it needful, may provide a ſtock of ſuch materials as they find convenient for the ſetting poor priſoners on work, to be paid for by the treaſurer out of the general county rate: and may pay and provide fit perſons to overſee and ſet ſuch priſoners on work; and make ſuch orders for accounts concerning the premiſes, as ſhall be thought needful, and for puniſhment of neglect and other abuſes, and for beſtowing the profits ariſing by the labour of the priſoners for their relief. Provided that the ſum to be ſo paid do not exceed the rate of 6d. a-week for any one pariſh. 19 *C.* 2. *c.* 4. *ſ.* 1. 12 *G.* 2. *c.* 29.

And by 31 *G.* 3. *c.* 46. after reciting, that it is fit the proviſions in the ſaid act 19 *C.* 2. *c.* 4. ſhould be executed, and that the ſame ſhould alſo be extended to all priſoners inclined to take the benefit thereof, or who are inclined and willing to work; and alſo to increaſe the ſum therein limited for defraying the expences of executing the ſame: It is enacted, that the juſtices in ſeſſions may direct the payment of ſuch ſums of money out of the county rate as they ſhall think fit in executing the proviſions of the ſaid act according to the extenſion thereof hereby made. *ſ.* 12.

VI. How they ſhall be maintained.

By 14 *El. c.* 5. & 12 *C.* 2. *c.* 29. priſoners are to be provided for by a ſum to be paid out of the general county rate, by the high conſtables, to ſuch ſufficient perſons dwelling nigh the gaols, as ſhall be appointed by the juſtices in open ſeſſions, who ſhall be there ready to receive it.

And by 31 *G.* 3. *c.* 46. the juſtices in ſeſſions may order ſuch ſums as they ſhall think neceſſary to be paid out of the county rate, towards aſſiſting ſuch priſoners as are not able to work, or being able, cannot procure employment ſufficient to ſuſtain themſelves in food and raiment, and are not otherwiſe provided for by law. *ſ.* 13.

VII. Regulations to be obſerved in gaols, and in the keeping and reſtraining of priſoners.

Where priſoners ſhall be kept.

The county gaol is the priſon for malefactors; but priſoners for debt, where eſcape lies againſt the ſheriff for their

their eſcaping, may be kept in what place the ſheriff pleaſes. L. *Raym.* 136.

When only to be removed.

By the 31 *C.* 2. *c.* 2. If any perſon ſhall be committed to any priſon, for any criminal or ſuppoſed criminal offence, he ſhall not be removed from thence, unleſs it be by *habeas corpus* or ſome other legal writ: or where he is removed from one priſon or place to another, within the ſame county, in order to his trial or diſcharge; or in caſe of ſudden fire or infection, or other neceſſity: On pain that the perſon ſigning any warrant for ſuch removal, and the perſon executing the ſame, ſhall forfeit for the firſt offence 100l. and for the ſecond 200l. to the party grieved. *ſ.* 9.

But on emergent occaſions, as in caſe of infectious diſeaſes, the ſheriff or gaoler, with the advice and conſent of three or more juſtices (1 *Q.*) may, if they ſhall find it needful, provide other ſafe places (with the owners' conſent) for the removal of ſick or other perſons out of the uſual gaols. 19 *C.* 2. *c.* 4. *ſ.* 2.

Debtors and felons to be kept ſeparate.

By the 22 & 23 *C.* 2. *c.* 20. The gaoler ſhall not put, keep, or lodge priſoners for debt and felons together in one room or chamber; but they ſhall be put, kept, and lodged ſeparate and apart from one another in diſtinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. *ſ.* 13.

Tranſports to be kept ſeparate from other priſoners.

And by 31 *G.* 3. *c.* 46. As long as any perſon under ſentence of tranſportation ſhall continue in the common gaol, the gaoler ſhall ſeparate ſuch convict, as far as conveniently may be, from every perſon in his cuſtody, except priſoners convicted of felony. *ſ.* 9.

To be kept in cloſe cuſtody.

Nevertheleſs it ſeemeth generally in all caſes where a man is committed to priſon, eſpecially if it be for felony, or upon an execution, or but for a treſpaſs or other offence, every gaoler ought to keep ſuch priſoner in ſafe and cloſe cuſtody; ſafe, that he cannot eſcape; and cloſe, without conference with others or intelligence of things abroad. *Dalt. c.* 170.

And therefore if the gaoler ſhall licenſe his priſoner to go abroad for a time, and then to come again, or to go abroad with a keeper, though he come again, yet theſe are eſcapes. *Id.*

May be ironed.

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his eſcape. 1 *H. H.* 601. *Dalt. c.* 170.

And it is ſaid, that a gaoler is no way puniſhable for keeping even a debtor in irons. 2 *Haw.* 152.

But

But the learned editor of *Hale's Hiſtory* obſerves, that this liberty even in the caſe of a felon (much more in the caſe of a priſoner for debt) can only be intended, where the officer has juſt reaſon to fear an eſcape; as where the priſoner is unruly, or makes any attempt to that purpoſe; but otherwiſe, notwithſtanding the common practice of gaolers, it ſeems altogether unwarrantable, and contrary to the mildneſs and humanity of the laws of *England*, by which gaolers are forbidden to put their priſoners to any pain or torment. And L. *Coke*, 2 *Inſt.* 381. is expreſs, that by the common law it might not be done. 1 *H. H.* 601.

Priſoner dying in gaol.

And if the gaoler keep the priſoner more ſtrictly than he ought of right, whereof the priſoner dieth, this is felony in the gaoler by the common law: And this is the cauſe, that if a priſoner die in gaol, the coroner ought to ſit upon him; and if the death was owing to cruel and oppreſſive uſage on the part of the gaoler or any officer of his, it will be deemed wilful murder in the perſon guilty of ſuch dureſs. 3 *Inſt.* 91. *Foſt.* 321, 322.

Priſoner or gaoler being killed.

But if a criminal, endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. 1 *H. H.* 496. For gaolers and their officers are under the ſame ſpecial protection that other miniſters of juſtice are. And therefore, if in the neceſſary diſcharge of their duty they meet with reſiſtance, whether from priſoners in civil or criminal ſuits, or from others in behalf of ſuch priſoners, they are not obliged to retreat as far as they can with ſafety, but may freely and without retreating repel force with force. And if the party ſo reſiſting happeneth to be killed, this, on the part of the gaoler, or his officer, or any perſon coming in aid of him, will be juſtifiable homicide. On the other hand, if the gaoler, or his officer, or any perſon coming in aid of him, ſhould fall in the conflict, this will amount to wilful murder in all perſons joining in ſuch reſiſtance. It is homicide committed in defiance of the juſtice of the kingdom. *Foſt.* 321.

Regulations to be obſerved for keeping priſons clean.

But foraſmuch as the gaol is intended, in moſt caſes, for cuſtody and not for puniſhment; and confinement itſelf in ſuch diſmal abodes is ſufficiently afflictive and diſconſolate; human nature will plead for thoſe miſerable objects, that their condition be rendered as tolerable as the caſe will admit of; particularly with regard to cleanlineſs, which is the parent of health; and wholeſome air, which

is

is life itſelf. In conformity with theſe humane ſentiments, the following regulations were eſtabliſhed by the 14 *G.* 3. *c.* 59. Whereas the malignant fever, commonly called the gaol diſtemper, is found to be owing to want of cleanlineſs and freſh air in the ſeveral gaols, the fatal conſequences whereof * might be prevented, if the juſtices of the peace were duly authorized to provide ſuch accommodations in gaols, as may be neceſſary to anſwer this ſalutary purpoſe; it is therefore enacted, that the juſtices, in their ſeveral quarter ſeſſions, ſhall order the walls and ceilings of the ſeveral cells and wards, both of the debtors and felons, and alſo of any other rooms uſed by the priſoners in their reſpective gaols where felons are uſually confined, to be ſcraped and whitewaſhed once in the year at leaſt; and to be regularly waſhed and kept clean, and conſtantly ſupplied with freſh air by hand ventilators or otherwiſe: and ſhall order two rooms in each gaol, one for the men, and the other for the women, to be ſet apart for the ſick priſoners, directing them to be removed into ſuch rooms as ſoon as they ſhall be ſeized with any diſorder, and kept ſeparate from thoſe who ſhall be in health; and ſhall order a warm and cold bath, or commodious bathing tubs, to be provided in each gaol, and direct the priſoners to be waſhed in ſuch warm or cold baths or bathing tubs, according to the condition in which they ſhall be at the time, before they are ſuffered to go out of the gaol upon any occaſion whatſoever. And they ſhall order this act to be printed in large and legible characters upon a board, and hung up in ſome conſpicuous part of the gaol. And they ſhall alſo appoint an experienced ſurgeon or apothecary, at a ſtated ſalary, to attend the gaol; who ſhall report to the juſtices, at each quarter ſeſſions, a ſtate of the health of the priſoners under his care. *ſ.* 1.

And they ſhall have power, in their ſaid quarter ſeſſions, to order clothes to be provided for the priſoners, when they ſee occaſion; and to prevent the priſoners from being kept under ground, whenever they can do it conveniently; and to make ſuch other orders, from time to time, for reſtoring or preſerving the health of priſoners, as they ſhall think neceſſary: and alſo to direct the ſeveral

* Theſe fatal conſequences were ſufficiently felt at the Old Bailey ſeſſions in 1750, of which Mr. Juſtice *Foſter* has given an account. *Foſt.* 74.

courts

courts of juſtice within their reſpective juriſdictions to be properly ventilated. *ſ.* 2.

And the expences attending the execution hereof, ſo far as the ſame ſhall reſpect county gaols and courts of juſtice belonging to counties, ſhall be paid out of the county rates; and ſo far as they reſpect the gaols and courts of juſtice of particular cities, franchiſes, or places, that do not contribute to the county rate, ſhall be paid out of the public ſtock of ſuch city, franchiſe, or place. *ſ.* 3.

And if the gaoler ſhall neglect or diſobey the orders of the juſtices he may be proceeded againſt in a ſummary way, by complaint to the judges of aſſize, or to the juſtices in their quarter ſeſſions; and if he be found guilty, he ſhall pay ſuch fine as they ſhall impoſe, and be committed in caſe of non-payment. *Id.* [It is not ſpecified to what place, nor for what time*.]

Viſiting juſtices to be appointed.

And by 31 *G.* 3. *c.* 46. For the better preventing abuſes in gaols, the juſtices ſhall at every ſeſſions after the paſſing of this act, appoint two or more juſtices viſitors of every ſuch gaol, who ſhall, either together or ſingly, perſonally viſit and inſpect ſuch gaol at leaſt three times in each quarter of a year, and oftener if occaſion ſhall require; and ſhall examine into the ſtate of the buildings, the behaviour and conduct of the officers, and the treatment and condition of the priſoners, and the amount of their earnings, and the expences attending ſuch priſon; and in matters of preſſing neceſſity, and within the powers of their commiſſion as juſtices, ſhall take cognizance thereon, and proceed to regulate and redreſs the ſame; and at every ſeſſions, the ſaid viſiting juſtices reſpectively, ſhall make a report in writing of the ſtate and condition thereof, and of all abuſes which may occur to their obſervation therein; and the chairman of ſuch ſeſſions ſhall call upon the ſaid viſitors for ſuch report. And any juſtice of his own accord, and without being appointed a viſitor, may enter into and examine the ſame at ſuch time and as often as he ſhall think fit, and if he ſhall diſcover any abuſe therein, he ſhall report the ſame in writing to the next ſeſſions or adjournment; and when any abuſes ſhall

Any other juſtice may examine gaols.

* Theſe ſalutary proviſions are owing in a great meaſure to the ſuggeſtions of the late *John Howard* eſq. of *Bedford*, a gentleman whoſe name ought to be for ever remembered with honour in the annals of this kingdom, and whoſe character is ſo well known and revered as to need no encomiums here.

be

be reported in manner aforeſaid, the ſame ſhall be taken into immediate conſideration, and ſuch effectual meaſures ſhall be adopted for inquiring into and rectifying the ſame, as ſoon as the nature of the caſe will allow. *ſ.* 5.

Extraordinary diligence or merit in offenders.

And if ſuch viſitors ſhall obſerve or be ſatisfactorily informed of any extraordinary diligence or merit in any offender, they ſhall report the ſame to the judges at the next aſſizes, who may if they think proper recommend ſuch offender to the royal mercy, and if his majeſty ſhall ſhorten the time of confinement of ſuch offender, he ſhall, together with neceſſary cloathing, receive ſuch ſum for his immediate ſubſiſtence, as the ſaid viſiting juſtices ſhall think proper, not exceeding 20s. nor leſs than 5s. in caſe he hath been confined for one year, and ſo in proportion for any ſhorter term; ſuch money, as alſo the expence of ſuch cloathing, ſhall be paid out of the county rate. *ſ.* 14.

A table of fees to be ſettled.

And whereas a conſiderable part of the emoluments of gaolers has uſually ariſen from fees paid by debtors and other priſoners, and from incidental charges made on the county rate, on the diſmiſſion of priſoners, and on the removal of tranſports: and by neglects in regulating the ſaid fees as directed by the 32 *G.* 2. *c.* 28. they are become oppreſſive to poor priſoners, and ſuch charges on the county rate are liable to frequent abuſes; it is enacted, that the juſtices in ſeſſions or ſpecial adjournment thereof, ſhall within 12 months after the paſſing of this act, regulate and ſettle a table of fees and rates to be taken by gaolers; and the ſaid juſtices ſo aſſembled, may from time to time alter, vary, or totally diſallow of all or any ſuch charges and fees; and ſhall order a copy thereof ſo regulated to be hung up in the court of aſſize and quarter ſeſſions, and another copy thereof to be ſent to the gaoler, who ſhall cauſe the ſame to be hung up in ſome conſpicuous place within the gaol; and all orders and directions contained in the ſaid act of 32 *G.* 2. reſpecting the table of fees to be taken by gaolers, ſhall be conformed to as if the ſame were herein particularly enacted and repeated. *ſ.* 15.

Salaries may be granted where emoluments are diminiſhed.

And by way of recompence for any diminution of emolument in the office of gaoler by means of any ſuch regulation of fees, or by the diſallowing any ſuch charges on the county rate, or in lieu of the profits and emoluments that have uſually ariſen from the office of gaoler; the ſaid juſtices ſo aſſembled, may grant ſuch ſalaries and allowances to ſuch gaoler and his aſſiſtants as to them ſhall ſeem reaſonable; and from time to time may alter and vary the ſame as they ſhall think fit, which ſhall be paid out of the county rate,

Sheriff to be conſenting.

upon an order ſigned by the chairman of ſuch ſeſſions, ſpecifying ſuch ſalary and allowance: Provided always, that no ſuch regulation which may in any wiſe affect the ſheriff or his officers, ſhall have effect pending the continuance in office of the ſheriff who ſhall be actually in commiſſion at the time of making ſuch regulation, unleſs he ſhall, by writing under his hand, conſent thereto; and ſuch juſtices in granting to any gaoler any ſuch ſalary or allowance, may ſtipulate as a condition of the payment thereof, that he do regularly obſerve and keep the rules and orders of the gaol. *ſ.* 15.

Juſtices may ſtipulate with gaolers.

Women, &c. are not to have ſuch allowance.

But no ſuch ſalary and allowance ſhall be paid out of ſuch county rate, to any woman, or other perſon incapable of executing the office in perſon, who may at any time be appointed a gaoler. *Id.*

Penalties.

All fines, forfeitures, and penalties inflicted by this act, the recovering and application whereof is not particularly herein directed, ſhall be levied by diſtreſs by two juſtices, who may hear and determine the ſame; and when recovered, ſhall be paid to the treaſurer of the county or diviſion, and applied to the purpoſes of this act. And for want of ſufficient diſtreſs, the offender ſhall be committed to priſon for any time not exceeding 3 nor leſs than 1 calendar month, as ſuch juſtices ſhall think proper. *ſ.* 16.

And the conviction may be in the following form:

Conviction.

Be it remembered, that on ——— *in the year of our lord* ——— A. C. *is convicted before me* J. P. *one of his majeſty's juſtices of the peace for the county of* ——— [here ſet forth the offence.] Given, &c. *ſ.* 17.

Appeal.

If any perſon ſhall think himſelf aggrieved (where no particular method of relief is appointed) he may appeal to the ſeſſions, within 4 calendar months after the cauſe of complaint ſhall have ariſen, firſt giving 7 clear days' notice at leaſt in writing of his intention to appeal, and the matter thereof, to the juſtice or juſtices who convicted him, and to the clerk of the peace; and within two days after ſuch notice, he ſhall enter into recognizance before ſome juſtice, with two ſureties to try ſuch appeal, and to abide the order of, and pay ſuch coſts as ſhall be awarded at ſuch ſeſſions; who, upon due proof of ſuch notice having been given, and recognizance entered into as aforeſaid, ſhall hear and finally determine ſuch appeal in a ſummary way, and award ſuch coſts to either party as they ſhall think

think proper, which determination ſhall be final to all intents and purpoſes. *ſ.* 18.

And no proceedings herein or touching ſuch conviction ſhall be quaſhed for want of form, or removed by *certiorari*. And no diſtreſs ſhall be deemed unlawful, nor the party making the ſame deemed a treſpaſſer on account of any defect in the proceedings, nor ſhall ſuch party be deemed a treſpaſſer *ab initio* on account of any irregularity which may be afterwards done by the party diſtraining, but the perſon aggrieved may recover ſpecial damages in an action on the caſe. But no plaintiff ſhall recover, if tender of ſufficient amends hath been made, before ſuch action brought. *ſ.* 19.

Proceedings not to be quaſhed for want of form.

VIII. Gaolers to make returns.

And the keeper of every gaol, ſhall the firſt day of every aſſize make a return in writing to the clerk of aſſize or other proper officer, and ſhall ſpecify therein the number and ſize of the cells, the names of the priſoners, and the offences of which they have been guilty; the court before which each perſon was convicted, and the ſentence of the court if tried and convicted before any court of record, or if committed by a juſtice of the peace, then the name of ſuch juſtice, and the offence of which he was convicted, the age, bodily eſtate, and behaviour, of every ſuch convict. 31 *G.* 3. *c.* 46. *ſ.* 8.

Returns to be made of the ſize and condition of gaols.

And every ſuch return before it is delivered into court, ſhall be examined by one of the viſiting juſtices to be appointed as aforeſaid, who ſhall ſign ſuch return, and annex thereunto ſuch obſervations as he ſhall think fit, on every particular therein contained. *ſ.* 9.

To be examined by a juſtice.

And in caſe the gaol ſhall not be in a ſtate to afford the means of ſeparation as directed by 24 *G.* 3. *c.* 54. the gaoler ſhall report the inſufficiency thereof to the grand jury at every aſſizes till ſuch means of ſeparation are effected. *ſ.* 11.

Gaolers to report the inſufficiency of gaols.

IX. Of clergymen to officiate in gaols.

The juſtices in ſeſſions may appoint clergymen to officiate in gaols according to the rites of the church of *England*, and allow to each a ſalary not exceeding 50l. a-year; to be paid by the treaſurer out of the county rate. 13 *G.* 3. *c.* 58.

X. *How priſoners ſhall be delivered.*

Names of priſoners to be delivered.

By the 3 *H.* 7. *c.* 3. Thoſe that have the cuſtody of gaols, muſt certify the names of all priſoners, to the juſtices of gaol delivery, in order to their trial or diſcharge; on pain of 5l.

No fees to be taken of priſoners acquitted.

And if a gaoler detains a priſoner in gaol after his acquittal, unleſs it be for his fees, (not for meat, drink, or lodging,) this is an unlawful impriſonment. 2 *Inſt.* 53.

And a gaoler muſt not diſobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the priſoner over till the gaoler be paid all his fees. 2 *Haw.* 151.

But by the 14 *G.* 3. *c.* 20. If the priſoner is acquitted, or diſcharged upon proclamation for want of proſecution, or hath no bill found againſt him, he ſhall pay no fee to the gaoler for his diſcharge; but ſuch fee as hath been uſual, not exceeding 13s. 4d. ſhall, on certificate of a judge or juſtice before whom ſuch priſoner ſhall have been diſcharged, be paid out of the general county rate.

Priſoners diſcharged may be conveyed by a vagrant paſs.

And by 32 *G.* 3. *c.* 45. Any judge of aſſize, or juſtices in ſeſſions, or juſtice of the peace, may order any convict upon his diſcharge from priſon; and alſo any perſon who ſhall be acquitted at the aſſizes, or ſeſſions, or diſcharged by proclamation or otherwiſe, to be conveyed by a vagrant paſs as directed by 17 *G.* 2. *c.* 5. who ſhall by himſelf, or any other perſon, apply to ſuch court or juſtice to be ſo conveyed; and the judge, juſtices, or juſtice aforeſaid, ſhall certify in ſuch paſs, that the perſon ſo conveyed was diſcharged from priſon, or acquitted, or otherwiſe diſcharged at the aſſizes or ſeſſions as the caſe may be, for which paſs no fee ſhall be paid. *ſ.* 4.

XI. *Of gaolers permitting eſcapes.*

If the gaoler voluntarily ſuffer a priſoner to eſcape, he ſhall be puniſhed in the ſame manner as the priſoner ought to have been who eſcaped; and if he negligently permit him to eſcape, he ſhall be puniſhed by fine and impriſonment: And the ſheriff ſhall anſwer for him. 2 *Haw.* 134, 5, 6.

But the principal gaoler is only fineable for the voluntary eſcape of a felon ſuffered by his deputy; for no one ſhall ſuffer capitally for any crime, but he who is actually guilty of it. 2 *Haw.* 135.

But for a negligent eſcape ſuffered by his bailiff, the ſheriff is as much liable to anſwer, as if he had actually ſuffered it himſelf; and the court may charge either the

ſheriff

ſheriff or bailiff for it: And if a deputy gaoler be not ſufficient to anſwer a negligent eſcape, his principal muſt anſwer for him. 2 *Haw.* 135.

XII. Concerning debtors.

Arreſting and carrying to gaol.

By the 32 *G.* 2. *c.* 28. No ſheriff, bailiff, or other officer, ſhall carry any perſon by him arreſted or being in his cuſtody by virtue of any writ or other proceſs, to any tavern, alehouſe, or other publick victualling or drinking houſe, or to the private houſe of any ſuch officer or of any tenant or relation of his without his free conſent; nor charge him for any liquor, victuals, or other thing whatſoever, but what he ſhall call for of his own accord; nor cauſe or procure him to call for any ſuch, but what he ſhall call for voluntarily; nor demand, directly or indirectly, any other or greater fee than is by law allowed; nor take any gratuity for keeping him out of gaol; nor carry him to gaol within 24 hours from the time of the arreſt, unleſs ſuch perſon arreſted ſhall refuſe to be carried to ſome ſafe and convenient dwelling-houſe of his own appointment within ſome city or market town, (if there arreſted,) otherwiſe within 3 miles from the place of arreſt, ſo as ſuch dwelling-houſe be not the houſe of the perſon arreſted, and be within the reſpective diviſion or liberty. *ſ.* 1.

And no ſheriff, bailiff, or other officer, ſhall take more for one or more night's lodging, or for a day's diet, or other expences of any perſon under arreſt, than ſhall be allowed by order of ſeſſions: Which ſeſſions ſhall make order therein, and vary the ſame from time to time as they ſhall ſee occaſion; and ſhall cauſe a copy of every ſuch order, and of every variation or alteration thereof, ſigned by the clerk of the peace, to be put and kept up in ſome conſpicuous place in the ſeſſions houſe or other proper place, that the ſame may be there ſeen and examined. *ſ.* 2.

And every ſheriff, and other perſon intruſted with the execution of proceſs, ſhall deliver a printed copy of the ſeveral clauſes in this act relating to bailiffs and other perſons to be employed under them, to every ſuch bailiff and other perſon; and ſhall alſo make it part of the condition of the bond to be given by ſuch bailiff or other perſon, that he will ſhew and deliver a copy of the ſaid clauſes to every perſon he ſhall arreſt and go with to any publick or other houſe where any liquor ſhall be ſold, and that he will permit every perſon ſo arreſted or any friend of his, to

read over the ſame clauſes beſore any liquor, meat, or victuals ſhall be called for or brought to ſuch perſon: And if any bailiff ſhall offend in the premiſſes, he ſhall, beſides the breach of the condition of the bond, be deemed guilty of a miſdemeanor in the execution of the proceſs, and puniſhable as ſuch by virtue of this act. *ſ.* 3.

Gaoler to ſuffer the priſoner to ſend for neceſſaries.

And the ſheriffs and gaolers ſhall ſuffer any priſoner for debt, at his will and pleaſure, to ſend for or to have brought unto him at ſeaſonable times in the day, any beer, ale, victuals, or other neceſſary food, from what place he ſhall think fit, or can have the ſame; and alſo to have and uſe ſuch bedding, linen, and other neceſſaries, as he ſhall have occaſion for and think fit, or ſhall be ſupplied with, without purloining or detaining the ſame, or requiring him to pay for the having or uſing thereof, or putting any manner of reſtraint or difficulty upon him in relation thereunto. *ſ.* 4.

Juſtices to eſtabliſh tables of fees, and rules and orders for the regulation of gaols.

The two lords chief juſtices and lord chief baron, or two of them, together with the mayor and two aldermen of *London*, or with three aldermen without the mayor, in reſpect of the priſons within the ſaid city; and the ſaid lords chief juſtices and chief baron, or two of them, together with three juſtices of the peace of *Middleſex* and *Surrey* reſpectively, for the priſons within the ſaid counties; and elſewhere, the juſtices in ſeſſions, ſhall eſtabliſh tables of the rates and *fees* to be taken by gaolers within their reſpective juriſdiction, and vary the ſame from time to time as they ſhall ſee occaſion. The ſame to be ſigned reſpectively by the ſaid judges, mayor, aldermen, and juſtices within *London*, *Middleſex*, and *Surrey*; and elſewhere to be ſigned by 3 or more juſtices in ſeſſions, and afterwards reviewed and confirmed or moderated by the judges of aſſize (or juſtices of great ſeſſions in *Wales* and *Cheſhire*) at the next aſſizes to be held after making or varying the ſame as aforeſaid; the ſame to be afterwards ſigned by the ſaid judges of aſſize and three juſtices of the peace of ſuch diviſion or place reſpectively. *ſ.* 5.

But in the caſe of *Boldero* and others, v. *Moſſes* and others, *M.* 30 *G.* 3. it was determined, that juſtices in ſeſſions have no authority to fix bailiffs' fees for arreſt, nor will the court of B. R. allow more than the uſual fee, although more be in fact paid, in compliance with a table of fees ſettled at the ſeſſions, and which has been acted upon for many years. *Durnf.* & *Eaſt*, 3 V. 417.

And proper *rules and orders*, for the better government of the reſpective gaols and priſoners therein, ſhall be made, and

and altered from time to time as there ſhall be occaſion, by the courts of *Weſtminſter-Hall* for the ſeveral priſons belonging to the ſaid courts: And by the ſaid lords chief juſtices and chief baron, or two of them, together with the mayor of *London* and 2 aldermen, or with 3 aldermen without the mayor, for the priſons within the ſaid city: And by the ſaid lords chief juſtices and chief baron, or two of them, together with 3 juſtices of the peace, for the priſons within *Middleſex* and *Surrey*; and elſewhere, by three or more juſtices in ſeſſions, for the priſons within their reſpective diſtricts; the ſame to be afterwards reviewed, and altered if thought neceſſary, by the judges of aſſize at the next aſſizes after making or altering the ſame: And after every making or altering as aforeſaid, the ſame ſhall be ſigned by the ſaid ſeveral perſons authorized to make, review, or alter the ſame. 32 *G.* 2. *c.* 28. *ſ.* 6.

And duplicates of every ſuch table of fees and of orders which ſhall be made for the priſons belonging to the courts of *Weſtminſter-Hall* ſhall be inrolled in ſuch court: And for any other priſons, ſhall be tranſmitted to the clerk of the peace, to be inrolled by him, without fee; and every ſuch clerk of the peace ſhall cauſe another copy thereof to be hung up in the court where the aſſizes or quarter ſeſſions ſhall be held, there to remain and be inſpected; and ſhall cauſe another copy thereof to be tranſmitted to the gaoler; and ſuch gaoler ſhall forthwith cauſe the ſame to be hung up in ſome open place and in a conſpicuous manner in his gaol; and to be there kept up, ſo as that the priſoners may have free reſort thereto, at ſeaſonable times in the day, without paying any thing for the ſame. *Id.*

And the courts of *Weſtminſter-Hall* ſhall, in every *Michaelmas* term, inquire whether ſuch tables of fees and ſuch rules or orders are there hung in the ſeveral priſons to them belonging, and duly complied with: And the judges of aſſize ſhall make like inquiry, and ſhall ſupply and redreſs whatever they ſhall find neglected or tranſgreſſed relating thereunto; and ſhall expreſsly give in charge to the grand jury, to make inquiries thereof. *ſ.* 7, 8.

And no gaoler ſhall take, directly or indirectly, of any priſoner for debt, damages, coſts, or contempt, any other fee for his commitment, or coming into gaol, chamber rent there, releaſe or diſcharge, than ſhall be allowed in the ſaid table of fees: And every ſheriff, gaoler, or other officer, who ſhall in any wiſe offend againſt this act, ſhall for every ſuch offence (over and above ſuch other penal-

ties or puniſhments as he ſhall be liable to by the laws now in force) forfeit to the party grieved 50l. with treble coſts. *ſ.* 12.

Charities to gaols.

The courts at *Weſtminſter*, juſtices of aſſize (and great ſeſſions), juſtices of the peace, and commiſſioners for charitable uſes, ſhall from time to time inquire concerning gifts and bequeſts to poor priſoners; who may ſend for papers and witneſſes, and examine perſons upon oath, and order and ſettle the payment thereof in ſuch eaſy and expeditious way as they ſhall think proper. *ſ.* 9.

And a table of ſuch benefactions, after every ſuch ſettling thereof, ſhall be tranſmitted to the clerk of the peace to be regiſtered by him without fee; and another table to the gaoler, to be hung and kept up by him in ſome conſpicuous place in his gaol, where the priſoners may have eaſy reſort thereto without fee. *ſ.* 10.

Redreſs of grievances.

On the petition in term time of any perſon being or having been under arreſt, complaining of any exaction or abuſe by the gaoler or other officer, unto any of the courts of record at *Weſtminſter*, from whence the proceſs iſſued; or in vacation time, to any of the judges of ſuch court, or to the judges of aſſize or great ſeſſions, or judges of any other court of record from whence ſuch proceſs iſſued; they ſhall hear and determine the ſame in a ſummary way, and make ſuch order thereupon for redreſſing the abuſes, and for puniſhing the offender, and for making reparation to the party injured, as they ſhall think juſt, together with full coſts of the complaint; the ſame to be inforced by attachment, or in any other manner as other orders of the ſaid courts or judges may be inforced. *ſ.* 11.

How priſoners may be diſcharged on delivering up their effects.

If any perſon ſhall be charged in execution, for any ſum not exceeding 100l. [and by the 33 *G.* 3. *c.* 5. *ſ.* 1. the ſame is extended to any ſum not exceeding 300l. (*a*),] and ſhall be minded to deliver up to his creditors who ſhall ſo charge him in execution, all his eſtate and effects towards the ſatisfaction of the debt wherewith he ſhall ſo ſtand charged; it ſhall be lawful for ſuch priſoner, before the end of the firſt term which ſhall be next after his being ſo charged in execution, to exhibit a petition to any court of law from whence the proceſs iſſued, or to the court into which he ſhall be removed by habeas corpus, or ſhall

(*a*) The 33 *G.* 3. *c.* 5. was at firſt but temporary, but by 39 *G.* 3. *c.* 50. the ſame is made perpetual.

be

be charged in cuſtody, and ſhall remain in the priſon thereof; certifying the cauſe of his impriſonment. *ſ.* 13.

And ſetting forth therein, not only a juſt and true account of all the real and perſonal eſtate which he or any perſon in truſt for him is entitled to at the time of his petitioning, and of all incumbrances and charges affecting the ſame; but alſo a juſt and true account of all the real and perſonal eſtate which he, or any perſon in truſt for him or for his uſe, was intereſted in or entitled to at the time of his impriſonment, either in poſſeſſion, remainder, or expectancy, to the beſt of his belief, and ſo far as his knowledge extends; and likewiſe a juſt and true account of all ſecurities wherein any part of his eſtate conſiſteth, and of all deeds, evidences, writings, books, bonds, notes, and papers concerning the ſame or relating thereto; and the names and places of abode of the witneſſes to all ſecurities, bonds, and notes, and where they are to be met with, ſo far as his knowledge extends. *Id.*

And before ſuch petition ſhall be received by any ſuch court, he ſhall cauſe to be given or left unto or for all the creditors at whoſe ſuit he ſhall ſtand charged in execution as aforeſaid, their executors or adminiſtrators, and at their uſual places of abode (or to the attorney or agent laſt employed in the cauſe, if ſuch creditors, or their executors or adminiſtrators, cannot be met with, and not otherwiſe) 14 days at leaſt before ſuch petition ſhall be preſented and received, a notice in writing, ſigned with his name or mark, importing, that he doth intend to petition the court from whence the proceſs iſſued upon which he ſtands charged in execution, or into the priſon to which he ſhall have been removed by habeas corpus, or ſhall ſtand charged in execution on any judgment recovered on any bill or declaration filed or delivered in any ſuch court; and alſo ſetting forth in ſuch notice, a true copy of the account or ſchedule of his eſtate which he intends to deliver into court (except the neceſſary wearing apparel and bedding of him and his family, and the tools or inſtruments of his trade or calling, not exceeding the value of 10l. in the whole): *Id.*

And an affidavit of the due ſervice of ſuch notice ſhall be delivered with the petition, and openly read in the court: *Id.*

And if the court ſhall be ſatisfied with the regularity of ſuch notice, the petition ſhall be received; and the court ſhall thereupon, by order or rule of the ſaid court, cauſe the priſoner ſo petitioning to be brought up, and the ſaid creditors or their executors or adminiſtrators to be ſummoned

moned to appear perſonally or by their attorney in the ſaid court: *ſ.* 13.

And on their appearance, or if they ſhall not appear, then on affidavit of the due ſervice of the ſaid order on them, or on their attorney if they cannot be met with; ſuch court ſhall, in a ſummary way, examine into the matter of the petition, and tender to the priſoner the oath following:

I A. B. *do ſwear in the preſence of Almighty God, that the account by me ſet forth in my petition preſented to this honourable court, doth contain a full and true account of the real and perſonal eſtate, debts, credits, and effects whatſoever, which I, or any in truſt for me, at the time of my firſt impriſonment in this action, or at any time ſince, had, or was in any reſpect entitled to, in poſſeſſion, reverſion, or remainder (except the wearing apparel and bedding of or for me and my family, and the tools or inſtruments of my trade or calling, not exceeding* 10*l. in value in the whole): and alſo an account how much of my real and perſonal eſtate, debts, credits, or effects, hath ſince been diſpoſed of, releaſed, or discharged, and how, to whom, and on what conſideration, and for what purpoſe, and how much thereof, I or any perſon or perſons in truſt for me, have, or at the time of my preſenting my ſaid petition to this honourable court, had, or which I am or was, or any perſon in truſt for me, or for my uſe, is any ways intereſted in or entitled to, in poſſeſſion, reverſion, remainder, or expectancy; and alſo a true account of all deeds, writings, books, papers, ſecurities, bonds, and notes, relating thereto, and where the ſame reſpectively now are to the beſt of my knowledge and belief, and what charges are now affecting the real eſtate I am now ſeiſed of or entitled to* [if ſuch priſoner ſhall then be ſeiſed of any real eſtate]; *and that I have not, at any time before or ſince my impriſonment, directly or indirectly ſold, leaſed, aſſigned, mortgaged, pawned, or otherwiſe diſpoſed of, or made over in truſt for myſelf, or otherwiſe, than is mentioned in ſuch account, any part of my meſſuages, lands, tenements, eſtates, goods, ſtock, money, debts, or other real or perſonal eſtate, whereby to have or accept any benefit, advantage, or profit, to myſelf or my family, or with any view, deſign, or intent, to deceive, injure, or defraud, any of my creditors to whom I am indebted: So help me God.*

And thereupon, the court may order the meſſuages, lands, tenements, goods, and effects, contained in the account, or as much of them as ſhall be ſufficient to ſatisfy the ſaid debts and fees due to the gaoler, to be (by a ſhort indorſement on the petition, and to be ſigned by the priſoner) aſſigned and conveyed to the ſaid creditors, their heirs,

heirs, executors, adminiſtrators, and aſſigns, for the benefit of them who ſhall have ſo charged ſuch priſoner in execution (ſubject nevertheleſs to all prior incumbrances affecting the ſame): *ſ.* 13.

And the eſtate, intereſt, or property of all meſſuages, lands, goods, debts, eſtates, and effects which ſhall belong to ſuch priſoner, ſhall by ſuch aſſignment be veſted in the perſons to whom the aſſignment ſhall be made; and they may take poſſeſſion, and ſue for the recovery thereof, in like manner as aſſignees of commiſſioners of bankrupts: *Id.*

And on ſuch aſſignment and conveyance being executed by ſuch priſoner, he ſhall be diſcharged out of cuſtody by rule or order of ſuch court; which order being produced to, and a copy thereof left with the ſheriff or gaoler, he ſhall forthwith diſcharge him, without taking any fee, or detaining him in reſpect of chamber rent, lodging, or otherwiſe: *Id.*

And the perſon to whom the eſtate ſhall be aſſigned, ſhall with all convenient ſpeed ſell and diſpoſe thereof, and divide the net produce amongſt the creditors who ſhall have charged ſuch priſoner in execution before the time of preſenting the petition, in proportion to their reſpective debts: *Id.*

But if any perſon at whoſe ſuit ſuch priſoner ſtood charged in execution, ſhall not be ſatisfied with ſuch priſoner's oath, and ſhall either perſonally or by his attorney (if he cannot perſonally attend, and proof ſhall be made thereof to the ſatisfaction of ſuch court) deſire further time to inform himſelf of the matters contained therein; ſuch court may remand the priſoner, and direct him, and the perſon diſſatisfied, to appear either in perſon or by his attorney, on ſome other day at fartheſt within the firſt week of the term next following the time of ſuch examination; but ſooner if ſuch court ſhall think fit: *Id.*

And all objections which ſhall be made as to the inſufficiency in point of form againſt the ſchedule, ſhall be only made the firſt time ſuch priſoner ſhall be brought up: *Id.*

And if at ſuch ſecond day, the creditor diſſatisfied ſhall not appear, or ſhall be unable to diſcover any eſtate or effects of the priſoner omitted in the account ſet forth in his petition; in ſuch caſe, the court ſhall order the priſoner to be diſcharged, on his executing ſuch aſſignment and conveyance as aforeſaid; unleſs ſuch creditor ſhall inſiſt

ſiſt upon his being detained, and ſhall agree by writing ſigned by him (or by his attorney, in caſe ſuch creditor ſhall be out of *England*) to pay weekly a ſum not exceeding 3 s. 6 d. 37 *G.* 3. *c.* 85. *ſ.* 2, 3. as ſuch court ſhall think fit, to the ſaid priſoner, to be paid weekly every *Monday*; and in ſuch caſe, the priſoner ſhall be remanded: But if any failure ſhall be made in the payment thereof, ſuch priſoner, upon application in term time to ſuch court, or in vacation time to any judge of ſuch court, may by order of ſuch court or judge be diſcharged, on his executing ſuch aſſignment as aforeſaid; proof being made on oath, of the non-payment, for any week, of ſuch ſum: 32 *G.* 2. *c.* 28. *ſ.* 13. 37 *G.* 3. *c.* 85. *ſ.* 2, 3, 4.

And if any priſoner ſhall refuſe to take the ſaid oath, or ſhall be detected before ſuch court or judge of falſity therein, or ſhall refuſe to execute ſuch aſſignment; he ſhall preſently be remanded. 32 *G.* 2. *c.* 28. *ſ.* 13.

Provided that where more creditors than one ſhall deſire to have ſuch priſoner detained; every of ſuch creditors ſhall only reſpectively pay ſuch ſum, not exceeding 2 s. a-week, 37 *G.* 3. *c.* 85. *ſ.* 4. as the court ſhall order. *ſ.* 14.

But where any priſoner ſhall be charged in execution in any county gaol, or in any other priſon above 20 miles from *Weſtminſter-Hall*, or from the court out of which the execution iſſued; then, on the like petition as aforeſaid, to the court from whence ſuch execution iſſued, or in the priſon of which ſuch priſoner is and ſtands charged in execution: and on affidavit in like manner as aforeſaid being made and left with ſuch petition; ſuch court, on being ſatisfied with the truth of ſuch affidavit, ſhall make a rule to cauſe the priſoner to be brought to the next aſſizes (or great ſeſſions in *Wales* and *Cheſhire*) to be holden for the place where he ſhall be impriſoned; and the expence of bringing him, not exceeding 1 s. a-mile, ſhall be paid to the gaoler out of the priſoner's eſtate if the ſame ſhall be ſufficient to pay ſuch expence; and if not, then to be paid by the treaſurer of the county or place in which ſuch priſoner ſhall be impriſoned, as ſhall be allowed by the judge; and the creditors, or their executors, or adminiſtrators, ſhall by order of the court from whence the proceſs iſſued, be ſummoned to appear at the ſaid aſſizes, if they can be met with; if not, then the attorney laſt employed for ſuch creditors; and a copy of ſuch order ſhall be ſerved on every ſuch creditor, or his executors or adminiſtrators, or left at his dwelling houſe or uſual place of abode, or with his attorney laſt employed, 14 days at leaſt

leaſt before ſuch aſſizes. And upon affidavit of ſuch ſervice thereof being laid before the judge of aſſize, he ſhall, on being ſatisfied with the truth of ſuch affidavit, appoint a time for hearing the matter of the petition, on ſome certain day and time, on the crown ſide of ſuch court, during ſuch aſſizes. And on the appearance of the ſaid creditors; or in default of their appearance, either in perſon or by attorney, then on proof of their being duly ſerved with the notice, and of a copy of the ſchedule being compriſed in ſuch notice, and of the rule of ſuch court for their appearance being duly ſerved; the judge ſhall in a ſummary way examine into the matter of the petition, and adminiſter the oath to the priſoner, and make ſuch order in the premiſes as to him ſhall ſeem meet, and proceed in manner as aforeſaid concerning the priſoner's diſcharge, and give the ſame judgment, relief, and directions relating thereunto, as any court out of which the proceſs ſhall iſſue is herein-before directed to do: And the order of the ſaid judge ſhall ſtand good, and be entered upon record in ſuch aſſizes; and a copy thereof (ſigned by the judge) ſhall be tranſmitted to the court from whence the execution iſſued, to be there alſo entered upon record. *ſ.* 15.

Priſoners committed for contempt of awards, and the ſpiritual court, &c.

And by the 26 *G.* 3. *c.* 44. (which is in force for five years) after reciting, that perſons are often committed on attachments, for non-payment of money awarded to be paid under ſubmiſſions to arbitration by rules of court, or arbitration bonds; and which ſubmiſſions have been made rules of court accordingly; and likewiſe for not paying coſts duly taxed and allowed, after proper demands made; and alſo upon writs of *excommunicato capiendo*, or other proceſs for or grounded on the non-payment, of coſts or expences in the eccleſiaſtical courts: It is enacted, that all ſuch perſons are and ſhall be entitled to the benefit of this act, and ſubject to the ſame terms and conditions as are herein expreſſed and declared with reſpect to priſoners for debt only. *ſ.* 3.

Gaolers to give notice of this act.

And all gaolers are required to give notice of this act, to all priſoners for debt in their cuſtody, within three days of their commitment, or being charged in execution, ſo as to make the ſame clearly and perfectly underſtood; on the penalty of 50l. to be recovered in the courts at *Weſtminſter*. *ſ.* 4.

Further time allowed to take the benefit of 32 G. 2. c. 28.

And debtors who have neglected to take the benefit of the aforeſaid act, 32 *G.* 2. *c.* 28. within the time therein limited, and ſhall have remained in priſon one year, and ſhall

ſhall make it appear to the court out of which execution iſſued, that ſuch neglect aroſe through ignorance, or miſtake; ſuch debtor ſhall then be entitled to take the benefit of the ſaid act, as if he had taken the ſame within the time by the ſaid act limited. *ſ.* 5. 33 *G.* 3. *c.* 5. *ſ.* 2. 5.

Creditors at whoſe ſuit debtors ſhall be under execution, may file interrogatories for the examination of ſuch priſoners before their being admitted to take the benefit of this or the ſaid former act. 26 *G.* 3. *c.* 41. *ſ.* 6. 33 *G.* 3. *c.* 5. *ſ.* 5.

How compellable to deliver up.

By the ſaid act of 32 *G.* 2. *c.* 28. If any priſoner who ſhall be charged in execution, for any debt or damages not exceeding 100l. [And by 33 *G.* 3. *c.* 5. *ſ.* 3. the ſame is extended to any ſum not exceeding 300l.*] beſides coſts of ſuit, ſhall not within three months next after his commitment make ſatisfaction to his creditors who charged him in execution; any ſuch creditor or creditors may require him, on giving 20 days' notice to him in writing that they deſign to compel him to give in to the court from which the proceſs iſſued, or into the court in the priſon whereof he ſhall be removed by habeas corpus, or ſhall remain or be charged in execution, within the firſt ſeven days of the term next after the expiration of the ſaid 20 days, in reſpect to any priſoner charged in any priſon belonging to the courts at *Weſtminſter*; and at the ſecond court which ſhall be held by any ſuch other court of record after the expiration of the ſaid 20 days, in reſpect to any priſoner charged in any priſon belonging to ſuch other court; and where ſuch priſoner ſhall be charged in execution in any county gaol or other priſon above 20 miles diſtant from *Weſtminſter-Hall* or from the court out of which the proceſs iſſued, then to give in upon oath at the aſſizes or great ſeſſions reſpectively, and on the crown ſide thereof, which ſhall be held for ſuch place next after the expiration of ſuch 20 days from the time of giving notice as aforeſaid, a true account in writing, to be ſigned by him, of all his real and perſonal eſtate, and of all incumbrances affecting the ſame, to the beſt of his knowledge and belief, in order that the eſtate and effects of ſuch priſoner may be deveſted out of him, and ordered by the court to be aſſigned and conveyed for the benefit of ſuch his creditors.

* The 33 *G.* 3. *c.* 5. is in force for 5 years, and from thence to the end of the then next ſeſſion of parliament.

And every ſuch creditor, requiring ſuch priſoner to be brought up as aforeſaid, ſhall give 20 days' like notice in writing of his intention to require ſuch priſoner to be brought up, to every other creditor at whoſe ſuit ſuch priſoner ſhall be detained or charged in cuſtody in ſuch gaol, if they can be found; and if not, then to the ſeveral attornies laſt employed: and ſhall alſo give a like notice in writing to the ſheriff or gaoler of ſuch his intention to have ſuch priſoner brought up, and to require ſuch ſheriff or gaoler to bring him up accordingly, 20 days at leaſt before the time appointed for him to be brought up. And thereupon ſuch ſheriff or gaoler ſhall, at the coſts of ſuch creditor, cauſe ſuch priſoner to be brought to ſuch court as by the notice is required, together with a copy of the cauſe or cauſes of his detainer: and if ſuch ſheriff or gaoler, on ſuch notice given to him as aforeſaid, and tender made to him by ſuch creditor of reaſonable charges not exceeding 1 s. a-mile, ſhall neglect or refuſe to bring him up as aforeſaid; he ſhall forfeit 20 l. to the party grieved, with treble coſts. And the priſoner ſo brought up, ſhall, on proof of ſuch notices being given as aforeſaid, deliver in there in open court upon oath, a full, true, and juſt account, diſcloſure, and diſcovery in writing, of the whole of his real and perſonal eſtate, and of all books, papers, writings, and ſecurities relating thereto, and alſo of all incumbrances then affecting the ſame, and the reſpective times when made, to the beſt of his knowledge and belief (except the neceſſary wearing apparel and bedding of him and his family, and the neceſſary tools or inſtruments of his trade or calling, not exceeding the value of 10 l. in the whole): which account ſhall be ſubſcribed by him. And on delivering in of ſuch account, the eſtate and effects of ſuch priſoner ſhall be aſſigned and conveyed by him, by a ſhort indorſement on the back of the ſaid account, to ſuch perſons as the court ſhall direct, in truſt and for the benefit of the creditors who ſhall have required ſuch priſoner to be brought up, and of ſuch other creditors (if any there be) at whoſe ſuit ſuch priſoner ſhall be charged in cuſtody or in execution in any ſuch gaol, and who ſhall, by any memorandum or writing ſigned by them before ſuch aſſignment made, conſent to ſuch priſoner's being diſcharged, and to accept a proportionable dividend of ſuch priſoner's effects; and if there be no other ſuch creditor, or being ſuch, if ſuch creditor ſhall not agree in writing to diſcharge ſuch priſoner and to accept ſuch dividend, then

in

in truſt for the creditors only who ſhall require ſuch priſoner to be brought up. And by ſuch aſſignment and conveyance, all the priſoner's eſtate and effects ſhall be veſted in the creditors to whom the ſame ſhall be aſſigned in truſt as aforeſaid. And upon ſuch diſcovery, aſſignment, and conveyance being made, the court ſhall diſcharge the priſoner in the actions and charges of every ſuch creditor, who required the priſoner to be brought up, or who ſigned ſuch conſent as aforeſaid; on paying 2s. 6d. a diſcharge fee, and no more, to the officers of the court. And no ſtamp ſhall be neceſſary on ſuch aſſignment or on any rule or order for ſuch diſcharge. But all the future effects of ſuch priſoner (except the neceſſary wearing apparel of him and his family, and the neceſſary tools or inſtruments of his trade or calling) ſhall be liable to ſatisfy his debts, if the ſame ſhall not be fully paid from his eſtate ſo aſſigned as aforeſaid; and no advantage in any ſuit ſhall be taken by him, for that the cauſe of action did not accrue within ſix years next before the commencement of ſuch ſuit, unleſs he was entitled to take ſuch advantage before he ſtood charged in cuſtody by virtue of the original ſuit or action.

And if he ſhall neglect or refuſe to deliver in and ſubſcribe ſuch account as aforeſaid, within the time hereinbefore appointed, or within 60 days then next following, without making appear ſome juſt excuſe to be allowed of by the court; or ſhall refuſe to aſſign or convey his eſtate and effects, according to the order of ſuch court; he ſhall on conviction upon indictment, be tranſported for 7 years: And if he ſhall deliver in a falſe account; or deſignedly conceal and not inſert in the account any books, papers, ſecurities, or writings relating to his eſtate and effects, with intent to defraud his creditors, and ſhall be thereof convicted on indictment, he ſhall ſuffer as for wilful perjury. *ſ.* 16, 17.

Aſſignees may compound.

By the ſaid act of 32 *G.* 2. *c.* 28. The aſſignees may compound with any debtors or accountants to ſuch priſoner, and take ſuch reaſonable part of any debt due, as can upon ſuch compoſition be gotten, and alſo may ſubmit matters to arbitration, relating to the priſoner's eſtate and effects, which ſhall be binding to all the parties. *ſ.* 21.

And where mutual credit hath been given between the priſoner and any other, before the delivery of the ſchedule; the aſſignees may ſtate and allow the account between them, and receive the balance. *ſ.* 23.

And it ſhall be lawful for the reſpective courts at *Weſtminſter* from whence the proceſs iſſued; or where the priſoner ſhall have been charged in execution by proceſs iſſued out of any other court, it ſhall be lawful for the judges of the courts of king's bench, common pleas, and exchequer, or any of them, from time to time, on the petition of any creditor who had charged ſuch priſoner in execution, or of ſuch priſoner, complaining of any inſufficiency, fraud, miſmanagement, or other miſbehaviour of any aſſignee, to order the parties to attend thereon; and upon hearing, they ſhall make ſuch order, either for the removal of ſuch aſſignee and appointing a new one, or for the juſt management of the effects, as to them ſhall ſeem meet. *ſ.* 22. Miſbehaviour in the aſſignees.

If the effects aſſigned ſhall not ſatisfy the whole debt and the gaoler's fees; the gaoler ſhall receive only a proportionable dividend with the other creditors. *ſ.* 19. Gaoler to have only his dividend.

A priſoner diſcharged ſhall never after be arreſted or liable to action for the ſame debt, unleſs convicted of perjury. *ſ.* 20. Priſoner diſcharged ſhall not be again arreſted.

But nevertheleſs, the judgment againſt him ſhall continue in force, and execution thereon may be had at any time againſt his lands and goods, other than his neceſſary wearing apparel and bedding for himſelf and family, and the neceſſary tools of his trade or occupation not exceeding 10l. value in the whole. *ſ.* 20. But his effects ſhall be liable.

If any perſon who ſhall take any oath as by this act required to be taken, ſhall upon any indictment for perjury be convicted by confeſſion or verdict; he ſhall ſuffer as for wilful perjury, and ſhall alſo be liable to be taken on any proceſs de novo, and ſhall never after have the benefit of this act. *ſ.* 18. Perſons guilty of perjury.

No perſon who ſhall have taken the benefit of any act for the relief of inſolvent debtors, ſhall have any benefit under this act; nor ſhall be deemed within the meaning of it, ſo as to gain any diſcharge, unleſs compelled by any creditor to deliver up his eſtate and effects. *ſ.* 24. Perſons not relievable having taken the benefit of any former act.

And by 31 *G.* 3. *c.* 46. The bye-laws made by the ſaid act of 32 *G.* 2. *c.* 28. ſhall be exactly conformed to. *ſ.* 6. Bye laws to be conformed to.

And by 26 *G.* 3. *c.* 38. No debtor, who ſhall be committed to priſon upon proceſs in any court for the recovery of ſmall debts authoriſed by particular acts of parliament, where the debt does not exceed 20s. ſhall be kept in cuſtody, on any pretence whatſoever, more than 20 days from the time of his commitment; and where the Debtors impriſoned by courts of conſcience.

original debt does not exceed 40 s. more than 40 days: And all gaolers and keepers of prisons are required to discharge such persons accordingly. *s.* 1.

And no such gaoler or keeper shall take or demand any gaol fees, or discharge fees, or other reward or gratuity whatsoever, on pain of forfeiting 5 l. for every such offence. *s.* 3.

Provided, that where debtors are found guilty of fraudulently concealing their effects, the commissioners may enlarge the aforesaid times of imprisonment, for debts under 20 s. to any time not exceeding 30 days, and under 40 s. not exceeding 60 days, to be specified in the commitment. *s.* 2.

And two justices may hear and determine any offences against this act; and on information made within two months after the offence shall be committed, may summon the party accused, and witness on either side, and upon confession, or the oath of one witness, may levy the said penalty of 5 l. by distress, to be applied half to the informer, and half to the poor of the parish where the offence is committed (the necessary charges being first deducted): and if sufficient distress cannot be found, may commit the offender to prison for two months, unless the penalty be sooner paid. *s.* 4, 5, 6.

XIII. *Concerning the prisons of the* king's bench *and* marshalsea.

The justices in *Easter* sessions shall set down what sums shall be sent out of every county or place corporate, for the relief of the poor prisoners of the *king's bench* and *marshalsea*, so as there be sent out of every county yearly 20 s. at the least to each of the said prisons; to be paid by the high constables out of the general county rate, to two such treasurers, or one of them, as by the more part of the justices of the county shall be elected to be treasurers: which treasurers, on the first day of *Trinity* term yearly, shall pay over the same to the lord chief justice of *England*, and knight marshal, or to whom they shall appoint, taking their acquittance for the same, or in default of the chief justice, to the next most antient justice of the *king's bench*, equally to be divided between the prisoners of the *king's bench* and *marshalsea* prisons. 43 *El. c.* 2. *s.* 12, 13, 14. 11 *G.* 2. *c.* 20. *s.* 1. 12 *G.* 2, *c.* 29.

And

And if the treaſurer ſhall neglect or refuſe, the king's bench may make a rule on him, requiring him to pay the ſame; and obedience to ſuch rule may be inforced as other rules of the ſaid court, at the coſts and charges of the treaſurer. 11 G. 2. c. 20. ſ. 2. 4.

And that the treaſurer may be the better amenable to the ſaid court, he ſhall within 30 days after his election or appointment, under the like penalty, tranſmit his name and place of abode to the clerk of the crown in the king's bench, to be entred by him; for which entry no fee ſhall be paid. ſ. 3.

Gauger. See Exciſe.
Gin. See Exciſe.

Glaſs.

BY the 13 G. 3. c. 38. For the eſtabliſhing a corporation for carrying on a glaſs manufactory, for the caſting of large plate glaſs (which act hath continuance for 21 years) many of the penalties and forfeitures are recoverable before one juſtice of the place where ſuch manufacture ſhall be carried on: Which not being general, it is thought ſufficient in this place to refer thoſe whom it may concern to the act itſelf.

For the Duties on Glaſs. See Exciſe.

Gloves.

BY 34 G. 3. c. 10. ſ. 1. the duty on gloves and mittens impoſed by 25 G. 3. c. 55. is repealed, except the duty on licences. And by 36 G. 3. c. 80. ſ. 1. the ſaid duty on licences is alſo repealed. Duty on gloves, &c. repealed.

And by 6 G. 3. c. 19. For the encouragement of the importation of foreign kid and lamb ſkins unmanufactured; if any foreign manufactured leather gloves or mitts Gloves, &c. not to be imported.

ſhall be imported (and by 25 *G.* 3. *c.* 55. *ſ.* 25. the ſame is extended to foreign leather which is not completely made into gloves and mittens, but is cut into the form of gloves and mittens called *Shapes or Tranks*) the ſame ſhall be forfeited, and may be ſearched for and ſeized by any officer of the cuſtoms or exciſe: And every perſon importing the ſame, or aiding therein; or, being a vender or retailer of any kind of leather gloves or mitts, in whoſe poſſeſſion any ſuch foreign manufactured leather gloves, or mitts or leather cut into the form of gloves, or mitts called ſhapes or tranks ſhall be found; or who ſhall ſell or expoſe the ſame to ſale; or conceal the ſame with intent to prevent the forfeiture; ſhall, over and above the forfeiture of the ſaid goods, and all intereſt he may have therein, forfeit alſo 200l. with double coſts. *ſ.* 1.

Two juſtices may determine offences out of the bills.

If the ſeizure ſhall be out of the limits of the bills of mortality, and not exceeding the value of 20l. two juſtices may hear and determine the ſaid cauſe and ſeizure of the ſaid goods. *ſ.* 2.

Gloves condemned to be exported.

After condemnation, the ſame to be publickly ſold to the beſt advantage, by the candle, for exportation; and not to be delivered out, till ſecurity be given that the ſame ſhall be exported, and not landed in any part of his majeſty's dominions. *ſ.* 3.

Application of the forfeiture.

Half the produce ariſing from the ſale, to go to the king; and half to the officer who ſhall ſeize and ſecure the ſame. *Id.*

Proof to lie on the offender.

And if any doubt ſhall ariſe where the ſame were manufactured, the proof ſhall lie on the perſon in whoſe poſſeſſion they ſhall be found, and not on the proſecutor; and if no proof be given that they were manufactured in *Great Britain*, they ſhall without any further proceeding be taken to have been manufactured out of *Great Britain*. *ſ.* 4.

Provided, that if any perſon, in whoſe poſſeſſion ſuch goods ſhall be found, (ſuch perſon not importing or concealing the ſame,) ſhall diſcover upon oath, before one juſtice, the perſon who ſold the ſame to him, ſo as the vender may be convicted, he ſhall be indemnified. *ſ.* 5.

The ſaid forfeiture to be ſued for in the courts at *Weſtminſter*; and to be diſtributed half to the king, and half to the officer who ſhall inform and ſue. *ſ.* 6.

But if the officers of the cuſtoms or exciſe ſhall neglect or refuſe, for one calendar month after condemnation, to proſecute for the pecuniary penalty; any other perſon may ſue for the ſame, to be diſtributed as aforeſaid. *ſ.* 7.

Provided

Provided that nothing herein ſhall extend to ſubject any wearer of ſuch gloves or mitts, as part of his dreſs only, to any forfeiture or pecuniary penalty. *ſ.* 8.

Good behaviour. See Surety.
Grand larcency. See Larceny.
Greyhound. See Game.

Gunpowder.

BY an act made in the 16 *C.* 1. *c.* 21. (to wit, in 1640, being the laſt ſtatute of force in that king's reign,) all ſubjects may make and ſell gunpowder, and bring into the kingdom ſalt-petre, brimſtone, or any other material for the making of it. Who may make gunpowder.

And by a ſtatute made in the firſt year of the reign of king *James* the ſecond (which is alſo ſomewhat remarkable), it is enacted, that if any perſon ſhall obtain a grant for the ſole making or importing of gunpowder, he ſhall incur a præmunire. 1 *J.* 2. *c.* 8. *ſ.* 3.

It ſeemeth, that erecting powder mills, or keeping powder magazines, near a town, is a nuſance by the common law: for which an indictment or information will lie. For in the caſe of *K.* and *Williams*, *E.* 12 *W.* there was an indictment againſt *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K.* and *Taylor*, *T.* 15 *G.* 2. the court granted an information againſt the defendant as for a nuſance, on affidavits of his keeping great quantities of gunpowder near *Maldon* in *Surrey*, to the indangering the church and houſes where he lived. *Str.* 1169. (Or rather, it ſhould have been expreſſed, to the indangering the lives of his majeſty's ſubjects.) Erecting powder mills near a town, a nuſance.

By the 12 *G.* 3. *c.* 61. (which reduces into one, and repeals all former acts relating to the making, keeping, and carrying of gunpowder). No perſon ſhall uſe any mill or other engine for making of gunpowder, in any place except in mills and other places where the manufacture of gunpowder ſhall be actually carrying on at the time of the commencement of this act, or where it ſhall afterwards become lawful to carry on ſuch manufacture by licence for that purpoſe as herein-after directed; on pain In what places gunpowder may be made.

of forfeiting all gunpowder manufactured otherwiſe; and 2 s. for each pound. *ſ.* 1.

No peſtle mill ſhall be uſed in making.

No perſon ſhall, for the making of gunpowder, uſe any mill or engine worked with a peſtle, commonly called a *Peſtle mill*; on pain of forfeiting all gunpowder manufactured therein, and 2 s. for each pound. *ſ.* 2.

What quantity ſhall be made at one time.

No perſon ſhall, in any mill or engine, make at any one time, under any ſingle pair of mill ſtones, any quantity of gunpowder, or materials to be made into gunpowder, exceeding 40lb.; on pain of forfeiting all above 40lb. and alſo 2 s. for each pound. *ſ.* 3.

Exception of Battle powder.

Provided, that nothing in this act ſhall extend to the powder mills now erected in the pariſhes of *Battle*, *Crowhurſt*, *Seddlecomb*, and *Brede*, in the county of *Suſſex*, ſo far as relates to the making ſuch fine fowling gunpowder only, as is known by the name of *Battle powder*. *ſ.* 5.

What quantity ſhall be dried at one time.

No perſon ſhall dry at any one time, in any one ſtove or place uſed for the drying of gunpowder, any quantity exceeding 40 hundred weight; on pain of forfeiting all above the ſaid weight, and 2s. for each pound. *ſ.* 6.

What quantity ſhall be kept in or near the place of making.

No perſon ſhall keep in any corning houſe, drying houſe, duſting houſe, or other place uſed in making of gunpowder, or in any building adjoining or belonging thereto (except magazines or ſtorehouſes conſtructed with ſtone or brick, and ſituate 50 yards at leaſt from the gunpowder mill) any greater quantity of gunpowder, than ſhall be neceſſary for the immediate work then carrying on in ſuch houſe or other place; on pain of forfeiting all the gunpowder above ſuch neceſſary quantity, and 2 s. for each pound. *ſ.* 7.

Magazines to be kept remote from the mill.

Every perſon and perſons, uſing any mill or other engine for making of gunpowder, ſhall, beſides the magazines and ſtorehouſes near their mills, have a good and ſufficient magazine remote from their reſpective mills, for the purpoſe of receiving and ſafe keeping all the gunpowder made at ſuch mills, as ſoon as the ſame can from time to time be conveniently removed thereto (which laſt-mentioned magazine ſhall be built with brick or ſtone near the river *Thames* and below *Blackwall*, or in ſome other convenient place to be licenſed by the juſtices as hereinafter mentioned); on pain that every perſon making gunpowder, without having ſuch magazine remote from the mill or other place of making, ſhall forfeit 25 l. for every month during which he ſhall make gunpowder without having ſuch magazine, and 5 l. for every day during which he

he (not being hindred by ſtreſs of weather or other juſt impediment) ſhall wilfully neglect or delay removing, with due diligence, the gunpowder made at ſuch mill from thence, or from the magazine or ſtorehouſe adjoining thereto, to the magazine ſo to be ſituate remote from the mill. *ſ.* 8.

Charcoal not to be kept near the mill.

Every maker of gunpowder, who ſhall keep any charcoal within 20 yards of any mill or other engine for making gunpowder, or of any drying, corning, or duſting houſe, or magazine or ſtorehouſe thereto belonging, ſhall forfeit 5l. for every week during which ſuch charcoal ſhall be ſo kept. *ſ.* 10.

Within what limits gunpowder may be kept.

No perſon, being a dealer in gunpowder, ſhall keep at any one time more than 200lb. of gunpowder, and, not being a dealer, more than 50lb. in any houſe, mill, magazine, ſtorehouſe, warehouſe, ſhop, cellar, yard, wharf, or other building, or place occupied by him, or on any river or other water, (except in carriages loading or unloading, or paſſing on the land; or in ſhips, boats, or veſſels loading or unloading, or paſſing on any river or other water, or detained there by the tide or bad weather,) within the following limits; that is to ſay, Within the cities of *London* or *Weſtminſter*, or within 3 miles of either of them; or within any other city, borough, or market town, or one mile thereof; or within 2 miles of any of the king's palaces, or any of the king's magazines; or half a mile of any pariſh church; or in any other part of *Great Britain*, except in milns or other places which at the commencement of this act ſhall be uſed for the making of gunpowder, and in the places where it ſhall be lawful to make gunpowder, or to keep greater or unlimited quantities of gunpowder by force of the proviſions herein-after contained; on pain of forfeiting all the gunpowder beyond the quantity hereby allowed to be kept, and the barrels in which ſuch gunpowder ſhall be, and alſo 2s. for every pound beyond ſuch allowed quantity. *ſ.* 11.

Provided, that it ſhall be lawful for any perſon to keep, for the uſe of any mine or colliery, any quantity of gunpowder, not exceeding 300 pounds weight, in any magazine or warehouſe, ſo as the ſame be within 200 yards of ſuch mine or colliery, and not within any of the limits herein-before particularly deſcribed. *ſ.* 12.

The ſeſſions to licenſe the erecting of mills or magazines.

And whereas it may be neceſſary to have ſome places appointed, in which it may be lawful to erect new mills or other engines for making gunpowder, with proper magazines and offices adjoining thereto, and to have magazines

for keeping unlimited quantities of gunpowder in places where there are no mills; it ſhall therefore be lawful for the juſtices in ſeſſions, from time to time, to licenſe the erecting or having ſuch mills and offices, or ſuch magazines for keeping unlimited quantities of gunpowder in places, not being within *London* or *Weſtminſter*, or any other limits herein-before particularly deſcribed, the perſon applying having firſt given 14 days' notice in writing of the intention to make ſuch application, as alſo of the place or places propoſed for ſuch purpoſes reſpectively, to an overſeer of the poor or churchwarden of the pariſh or place wherein it is propoſed to erect ſuch new mill and offices or magazine, or of an adjoining pariſh if the place be extra-parochial; which overſeer or churchwarden ſhall cauſe ſuch notice to be publickly read on the *Sunday* next enſuing in the pariſh church after divine ſervice. *ſ.* 13.

And if the juſtices in the ſaid ſeſſions ſhall refuſe to grant ſuch licence, the party aggrieved may apply to the ſaid juſtices then preſent for a ſpecial ſtate of the caſe, together with the proofs offered for and againſt the application, in order that the ſaid caſe and proceedings may be removed by certiorari into the court of king's bench; and the juſtices in their return to the certiorari, ſhall ſtate ſuch ſpecial caſe. And if the court of king's bench ſhall be of opinion, that the juſtices ought not to have refuſed ſuch licence, they ſhall order the juſtices to grant ſuch licence at their next ſeſſions, and ſhall award coſts on the writ of certiorari as they ſhall think fit. *ſ.* 14.

Provided nevertheleſs, that no perſon ſhall be liable to any penalty or proſecution under this act, for keeping unlimited quantities of gunpowder without ſuch licence of the juſtices, in any magazine remote from any gunpowder mill, and already built and uſed for that purpoſe, in any place not being within *London* or *Weſtminſter* or the other limits herein before deſcribed, until the expiration of ſix kalendar months, after an adjudication by the juſtices that the ſame is dangerous: And they ſhall not have power to make ſuch adjudication, except on complaint to them by ſome houſeholder of the pariſh or place in which the magazine ſhall be, and after ſummons of the owner and examination of witneſſes. *ſ.* 15.

And whereas the makers of gunpowder will be liable to penalties for not having magazines remote from their mills, and in ſome caſes they may not be able to agree for the purchaſe of ground proper for the ſame; the juſtices in ſeſſions, on application by ſuch maker of gunpowder, may appoint

appoint proper and convenient pieces of ground, not being in *London* or *Weſtminſter* or other the limits aforeſaid, and not exceeding one acre in any one place, with the uſe of convenient roads thereto, on which they may erect magazines, after having agreed with the owner for the purchaſe of the ſame: And if ſuch owner ſhall not agree, or by reaſon of any impediment cannot agree, the juſtices ſhall iſſue a warrant to the ſheriff, to ſummon a jury to appear before them at a time and place appointed, who ſhall upon their oaths inquire into the true value of the ſaid pieces of ground, with the uſe of ſuch convenient roads thereto. And the juſtices may ſend for any perſons intereſted, and examine any parties or witneſſes upon oath. And the verdict of the jury ſhall be kept amongſt the records of the ſeſſions. And the judgment of the ſaid juſtices thereon ſhall be final. And the ſum of money ſo to be adjudged, not exceeding 30 years' purchaſe, ſhall be paid to the owner of the ground; and upon ſuch payment, or in caſe of refuſal to accept the money, then upon leaving the ſame with the juſtices for the benefit of the owner, the inheritance of the ground, and the uſe of the ſaid roads thereto, ſhall be veſted in the purchaſer, his heirs and aſſigns, for the purpoſe aforeſaid, and not otherwiſe. *ſ.* 16.

What quantities ſhall be carried at one time.

No perſon ſhall carry at any one time more than 25 barrels of gunpowder in any waggon, cart, or other carriage by land; or more than 200 barrels in any barge, boat, or other veſſel by water (except in veſſels with gunpowder imported from or to be exported to any place beyond the ſea, or going coaſtwiſe): And the barrels in which it ſhall be carried ſhall be cloſe joined and hooped, without any iron about them, and ſo ſecured that no part of the gunpowder be ſcattered in the paſſage: And each barrel ſhall contain no more than one hundred pounds of gunpowder: And when conveyed by land, ſhall be entirely cloſed in a leathern bag, or a bag commonly called a ſalt petre bag: And every carriage in which gunpowder ſhall be conveyed by land, ſhall have a complete covering of wood, painted cloth, tarpaulin, or wadmill tilts, over all the gunpowder therein contained: And alſo no gunpowder ſhall be conveyed in any barge, boat, or other veſſel by water (except in veſſels for importation, or exportation, or going coaſtwiſe, as aforeſaid) that hath not a cloſe deck; and as ſoon as any gunpowder is put on board ſuch veſſel, all ſuch gunpowder ſhall be covered with raw hides or tarpaulins.—And all gunpowder carried in greater quantity, or in other manner

manner than is herein-before preſcribed, and the barrels in which ſuch gunpowder ſhall be, may be ſeized by any perſon, who ſhall have the ſame authority to remove ſuch gunpowder and barrels, and for that purpoſe to uſe, during the ſpace of 24 hours after ſeizure, the carriage or veſſel in which ſuch gunpowder ſhall be ſeized, and the tackling, beaſts, and accoutrements belonging thereto, on paying a recompence for the uſe thereof, as is herein-after given to perſons ſearching under a juſtice's warrant: And ſuch ſeizure ſhall be for his own uſe, on conviction of the offender. *ſ.* 18.

And when any barge, boat, or veſſel, having ſtale, condemned, or returned gunpowder on board, arrives at the wharf, quay, or other place where the ſame is intended to be landed; no perſon ſhall begin to unload, or ſhall bring down to ſuch wharf, quay, or other place, with intent to load in ſuch veſſel, any other gunpowder, until the whole or part of ſuch ſtale, condemned, or returned gunpowder, be firſt unloaded and carried away from ſuch wharf, quay, or other place of landing: And after ſuch unloading and carrying away of part of ſuch gunpowder, no perſon ſhall begin to load, or ſhall ſo bring down with intent to load, any greater quantity of other gunpowder than the part unloaded and carried away; on pain of forfeiting all ſuch gunpowder as ſhall be ſo brought down or loaded contrary hereunto. *ſ.* 19.

Combuſtibles not to be kept on ſhipboard.

If any perſon, having the care or management of any barge, boat, or other veſſel (except ſhips for importation, exportation, or going coaſtwiſe, as aforeſaid) loaded with gunpowder, or any other perſon on board the ſame, ſhall bring, have, or uſe any charcoal or other combuſtible matter, or any fire or lighted candle, or ſhall ſmoke, or wittingly permit any perſon to ſmoke on board the ſame; he ſhall forfeit 5l. *ſ.* 20.

Gunpowder in carrying not to be delayed.

If any perſon having the care of any waggon, cart, or other carriage, uſed for the conveyance of gunpowder by land, ſhall, after beginning to load therein any quantity of gunpowder, or beginning to unload the ſame thereout, ſtop or ſtay at any place of loading, or in the loading or unloading ſuffer any longer time to paſs than ſhall be reaſonably neceſſary for that purpoſe; or if any perſon having the care of any barge, boat, or other veſſel uſed for the conveyance of gunpowder by water (except in the caſe of importation, exportation, or carrying coaſtwiſe as aforeſaid) ſhall, after beginning to load or unload any quantity of

of gunpowder, ſtop or ſtay at any wharf, quay, or other place of loading, or in the loading or unloading thereof ſuffer any longer time to paſs than ſhall be reaſonably neceſſary for that purpoſe, not exceeding 18 hours, unleſs hindred by the weather; or if any perſon ſhall take in or carry in ſuch carriage or veſſel any other lading of any kind; he ſhall forfeit 10l. *ſ.* 21.

Provided, that none of the aforeſaid proviſions concerning the conveying, loading, or unloading, ſhall extend to any other carriage or veſſel, than ſuch as ſhall carry a quantity of gunpowder exceeding 100 pounds weight. *ſ.* 22.

Power of the juſtices to ſearch.

And for the more eaſy diſcovery of offenders, any juſtice, on demand made, and reaſonable cauſe aſſigned upon oath, may iſſue his warrant for ſearching, in the day-time, any houſe, mill, magazine, ſtorehouſe, warehouſe, ſhop, cellar, yard, wharf, or other place, or any carriage, ſhip, boat, or veſſel, in which ſuch gunpowder is ſuſpected to be made, kept, or carried, contrary to this act: And all gunpowder found on ſuch ſearch, and alſo the barrels, ſhall be immediately ſeized by the ſearcher, who ſhall with all convenient ſpeed remove the ſame to ſuch proper place as he ſhall think fit; and in caſe of gunpowder ſeized in any carriage or veſſel, may uſe for the purpoſe of removal, during the ſpace of 24 hours after ſeizure, ſuch carriage or veſſel, with the tackling, beaſts, and accoutrements belonging thereto, (paying afterwards to the owner a ſufficient recompence for the uſe thereof, to be ſettled by the juſtices before whom the cauſe ſhall be heard,) and may detain ſuch gunpowder and barrels, till it ſhall be adjudged on a hearing before two juſtices whether the ſame ſhall be forfeited. *ſ.* 23.

Regulations on the river Thames.

For ſecurity of ſhips on the river *Thames*, no maſter of any veſſel outward bound ſhall receive on board more than 25 lb. of gunpowder (except for the king's ſervice) before the arrival of ſuch veſſel at or below *Blackwall*; and the maſter of every veſſel coming into the river *Thames* ſhall (except in caſe of the king's ſervice) put on ſhore in proper places all the gunpowder on board above 25 pounds, either before the arrival of ſuch veſſel at *Blackwall*, or within 24 hours, (if the weather will permit,) and ſhall not afterwards have on board more than 25 pounds (except for the king's ſervice); on pain of forfeiting all the gunpowder found on board above 25 pounds, and the barrels containing the ſame, and alſo 2s. for every pound above the quantity of 25 pounds. *ſ.* 24.

And

And the maſter, wardens, and aſſiſtants of the corporation of Trinity-houſe of *Deptford Strond*, ſhall appoint ſearchers, who may, between ſun-riſing and ſun-ſetting, enter any ſhip or veſſel (except his majeſty's ſhips) in the *Thames* above *Blackwall*, and ſearch for unlawful quantities of gunpowder: and ſhall have the ſame powers of ſeizing, removing to proper places, and retaining all ſuch gunpowder and barrels, as are herein-before given to perſons ſearching by a juſtice's warrant. *ſ.* 25.

Penalties, how to be recovered.

All penalties on this act ſhall be recovered before two juſtices, on conviction of the offender by confeſſion or oath of one witneſs, and be diſtributed half to the king and half to the informer; and where the penalty is pecuniary, it ſhall be levied by diſtreſs, and for want of ſufficient diſtreſs, the offender ſhall be committed to the houſe of correction, to be kept to hard labour, not exceeding ſix months, nor leſs than three. *ſ.* 26.

Proſecution to be commenced within 14 days after ſeizure of the gunpowder, or commiſſion of the offence where there ſhall not be any ſeizure. *ſ.* 27.

General exception.

Provided, that this act ſhall not extend to any mills or other buildings erected for making gunpowder in any lands belonging to his majeſty; or to the keeping of gunpowder at any of his majeſty's ſtorehouſes or magazines; or to hinder the trial of gunpowder by his majeſty's officers; or to the keeping of gunpowder at the magazines now erected at *Barking Creekſmouth* in the county of *Eſſex*, *Eyrth Level* in the county of *Kent*, or the magazines near *Liverpool*, or the city of *Briſtol*; or to the carriage of gunpowder to or from the king's magazines, under a ſpecial order from the board of ordnance; or to the carriage of gunpowder with forces on their march, or with the militia during their annual exerciſe, or which ſhall be ſent for the uſe of ſuch forces or militia. *ſ.* 29.

Alſo, this act ſhall not extend to hinder any perſon from carrying an unlimited quantity of gunpowder, in ſuch cloſe decked veſſels and in ſuch manner as is herein-before directed, from any veſſels lying below *Blackwall*, or from ſuch magazines lying below *Blackwall*, and going to any place beyond ſea or coaſtwiſe. *ſ.* 30.

Guns. See Game.

Habeas Corpus. See Bail.

Hackney coaches and chairs.

THE king may appoint perſons not exceeding five, to be commiſſioners for regulating hackney coaches within the bills of mortality. 9 *An.* c. 23. *ſ.* 1. Commiſſioners.

Which commiſſioners ſhall under hand and ſeal licenſe hackney coaches within the cities of *London* and *Weſtminſter* and ſuburbs thereof, and other places within the bills of mortality, not exceeding 1000; and on every licence ſhall be reſerved 5 s. a-week, [and by 24 *G.* 3. *ſeſſ.* 2. *c.* 27. *ſ.* 1. an additional duty of 5 s. a-week] to be paid monthly. 9 *An.* c. 23. *ſ.* 2. 11 *G.* 3. *c.* 24. *ſ.* 28. Licenſing, and duty.

And they ſhall alſo licenſe hackney chairs within the ſaid liberties, not exceeding 400; reſerving a rent of 10s. a-year, to be paid quarterly. 9 *An.* c. 23. *ſ.* 3. 10 *An.* c. 19. *ſ.* 158. 12 *G.* c. 12. *ſ.* 15.

Every coach and chair ſhall have a diſtinct mark on each ſide; and if any ſhall alter ſuch mark, he ſhall forfeit 5 l. half to the informer, and half to the king. 9 *An.* c. 23. *ſ.* 4. Mark.

No horſe to be uſed with any hackney coach, ſhall be under 14 hands high. *Id.* Size of the horſes.

No perſon ſhall drive or let to hire any hackney coach without licence; on pain of 5 l.; nor ſhall carry any perſon for hire in a hackney chair, without licence; on pain of 40s. in like manner. *Id.* Penalty of driving without licence.

And by the 1 *G.* c. 57. *ſ.* 2. No unlicenſed perſon ſhall ply with any coach or hearſe, or ſhall let to hire any mourning coach, within the liberties aforeſaid, on pain of 5 l. as for driving unlicenſed. *ſ.* 3. Mourning coaches.

And if any perſon ſhall drive a mourning coach or hearſe to a funeral, within the cities of *London* or *Weſtminſter* or the ſuburbs thereof, or elſewhere within the bills of mortality, or within 5 miles of *Temple Bar*, without having a number fixed on the fore ſtandard, ſhewing it to be licenſed, he ſhall forfeit 5 l. And on information given to the commiſſioners, they may ſummon the driver thereof, and altho' no expreſs hiring ſhall be proved, it ſhall be adjudged a driving for hire. 24 *G.* 3. *ſeſſ.* 2. *c.* 27. *ſ.* 7.

And no perſon ſhall drive any cart, car, dray, or other ſuch like carriage within the limits aforeſaid, or within the Carts, &c. within the bills.

the borough of *Southwark*, except the owner thereof ſhall have entered his name, and place of abode, with the ſaid commiſſioners; and alſo cauſed his name, and the number of ſuch carriage, to be put upon ſome conſpicuous part thereof: And in caſe of neglect or refuſal, every ſuch owner or driver of ſuch carriage, ſo reſiding and driven within the limits aforeſaid, ſhall be liable to all the penalties and forfeitures created by any laws now in being relative to the owners or drivers of ſuch like carriages. *ſ.* 8.

But in the caſe of *K.* v. *Powell*, *H.* 32 *G.* 3. it was determined that the owner of a cart, who does not *reſide* within the bills of mortality, or within 5 miles of *Temple-bar*, need not enter his name and place of abode with the commiſſioners of hackney coaches, or have his name, or any number upon the cart, though it be driven within thoſe limits. *Durnf.* and *Eaſt*, 4 V. 572.

Limitation of diſtance.

Every licenſed coachman, plying for hire, within the cities of *London* and *Weſtminſter*, or the ſuburbs thereof, or elſewhere within the bills of mortality, ſhall be obliged and compellable, on every day of the week, at ſeaſonable times, to go any where within the diſtance of ten miles from either of the ſaid cities. 7 *G.* 3. *c.* 44. *ſ.* 12. 12 *G.* 3. *c.* 49. *ſ.* 1.

What ſhall be deemed ſeaſonable times.

And whereas doubts have ariſen, what are *ſeaſonable times* within the meaning of the ſaid act, and many coachmen refuſe to go after ſun-ſet to any diſtance from the ſaid cities where the houſes are not immediately adjoining, whereby perſons who reſide at ſhort diſtances are put to great inconvenience; for remedy whereof it is enacted, that every licenſed coachman and his renter or driver plying for hire, ſhall be obliged on every day of the week (unleſs he ſhall have been out 12 hours, or have other reaſonable excuſe) to go to any place within ten miles in caſe he ſhall have time to return to the ſaid cities by ſun-ſet, or the fare ſhall undertake to return in ſuch coach: And alſo to go upon all public high roads, being turnpike roads, or be lighted up, within two miles and a half from the ends or extreme parts of the reſpective carriage-way pavements of the ſaid cities, where a regular continuation of ſuch pavements doth extend. 32 *G.* 3. *c.* 47. *ſ.* 1, 2.

Additional pay for going in the night.

Provided, that every perſon hiring a hackney coach to go any further diſtance than ſuch carriage-way pavement doth extend after ſun-ſet, ſhall be liable to pay not only the common fare, but alſo 6d. for every diſtance not exceeding half a mile ſuch coach ſhall have to return to the end of ſuch pavement, unleſs the fare ſhall return in ſuch coach;

to

to be recovered as other fares. And if ſuch coachman ſhall refuſe to go, or ſhall exact more than his hire, he ſhall be liable to the like penalties and puniſhments as by any law now in force. *ſ.* 3.

Uſing a hackney coach as a ſtage coach.

But no perſon who ſhall regularly uſe ſuch hackney coach as a *ſtage coach* to and from any of the towns or places in the neighbourhood of *London* or *Weſtminſter*, ſhall be obliged to carry any fare out of the ordinary courſe of his ſtage work or duty; provided that he do, by painting in legible characters, on the door of ſuch coach, or on a board to be affixed on ſuch door, plainly denote and diſtinguiſh the ſame to be a ſtage coach to and from any ſuch town or place. 12 *G.* 3. *c.* 49. *ſ.* 2.

Drivers to have check ſtrings.

And the commiſſioners ſhall order the ſeveral perſons who take out licences for hackney coaches, that they provide check ſtrings or wire to be placed in ſuch convenient part of every ſuch coach as to the ſaid commiſſioners ſhall ſeem meet: and ever hackney coachman plying for hire without ſuch check ſtring or wire, ſhall forfeit 5 s. to be recovered as other penalties by any law relating to hackney coaches. 11 *G.* 3. *c.* 28.

Rates for coaches.

And by 26 *G.* 3. *c.* 72. Every licenſed coachman may demand and take the following fares; namely, For every *diſtance* not exceeding one mile and a quarter, 12 d.; not exceeding two miles, 1 s. 6 d.; not exceeding two miles and a half, 2 s.: and ſo increaſing 6 d. for every half mile ſuch coach ſhall go further. And as to the *time*, if not exceeding three quarters of an hour, 1 s.; if not exceeding one hour, 1 s. 6 d.; if not exceeding one hour and twenty minutes, 2 s.; and for every twenty minutes after, 6 d. For a day of 12 hours, 14 s. 6 d.; any time above 12 hours, ſhall be paid for according to the rate aforeſaid. *ſ.* 1.

Exacting more than the fare.

And if any perſon ſhall exact or take more than the rates aforeſaid, he ſhall be ſubject to the like penalties and puniſhments, and to be levied in the like manner and form as by any law now in being reſpecting hackney coaches. And the ſaid fares may be recovered, in like manner as the fares for hackney coaches are by any act of parliament now recoverable. *ſ.* 2.

Rates for chairs.

And a chairman may take for any diſtance not exceeding one mile, 12 d.; for any diſtance above one mile and not exceeding one mile and four furlongs, 1 s. 6 d.; for every further diſtance not exceeding four furlongs, 6 d.; and by the hour, 18 d. for the firſt hour, and 6 d. for every half hour after. 7 *G.* 3. *c.* 44. *ſ.* 13.

Bye-laws.

And the commiſſioners may make bye-laws, to bind all perſons licenſed, and the renters of ſuch licences and the drivers. 9 *An.* *c.* 23. *ſ.* 16. 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 1.

The ſame to be approved by the lord chancellor, commiſſioners of the great ſeal, two chief juſtices, and chief baron, or three of them. 9 *An.* *c.* 23. *ſ.* 17.

Driver refuſing to go, or overcharging.

And if any hackney coachman ſhall refuſe to go at, or exact more for his hire, than according to the above act, or bye-laws; he ſhall forfeit a ſum not exceeding 3 l. nor under 10 s. 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 2.

Miſbehaviour.

And if any perſon who ſhall drive a coach, or carry a chair for hire, acting under a perſon licenſed, ſhall be guilty of miſbehaviour, by demanding more than his fare, or giving abuſive language, or other rude behaviour; he ſhall, on conviction on oath, forfeit not exceeding 20 s. to the poor; and if he ſhall not be able, or refuſe to pay, he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour for ſeven days, and receive the public correction of the houſe before he be diſcharged. 9 *An.* *c.* 23. *ſ.* 44.

And on miſbehaviour of a coachman or chairman by abuſive language, or otherwiſe, the commiſſioners may revoke his licenſe, or inflict on him a penalty, not exceeding 3 l. to the poor; and on non-payment, he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour for 30 days. 9 *An.* *c.* 23. *ſ.* 49. 7 *G.* 3. *c.* 44. *ſ.* 16.

And in every caſe where any perſon for any offence mentioned in any law relating to the licenſing and regulating of hackney coaches and chairs, ſhall be liable to be committed to priſon; it ſhall be lawful for the commiſſioners, or any three or more of them, either to commit ſuch offender to priſon as by any former act, and for any time not exceeding one month, or to commit ſuch offender to *Bridewell* or other houſe of correction, there to be kept to hard labour for any time not exceeding one month, and alſo to receive the correction of the houſe. 7 *G.* 3. *c.* 44. *ſ.* 15.

And in all caſes where they may commit offenders to *Bridewell* or other houſe of correction as aforeſaid, they may commit them immediately upon ſuch offenders being convicted before them. 10 *G.* 3. *c.* 44. *ſ.* 5.

Perſons refuſing to pay.

And if any perſon ſhall refuſe to pay, or ſhall deface any coach or chair, any juſtice may grant his warrant to bring him before him; and on proof upon oath may award ſatisfaction to the party, and on refuſal to pay, may bind him

over to the next ſeſſions, who may determine the ſame. 9 *An.* *c.* 23. *ſ.* 22.

And if any hackney coachman or his renter, ſhall be in arrear for any rent made payable by his licence for any longer time than is expreſſed therein, the ſaid commiſſioners may revoke ſuch licence, and levy the money upon the goods of either the owner or renter, in like manner and form as by any law now in being with reſpect to the owner. 26 *G.* 3. *c.* 72. *ſ.* 3.

Rents and penalties may be levied by diſtreſs.

The rents and penalties to be levied by diſtreſs, by warrant of three commiſſioners; which diſtreſs ſhall be ſold in ten days, returning the overplus, charges of the diſtreſs and of the warrant being firſt deducted (if on ſeven days' notice they pay not the fine without ſuch warrant); and in default of diſtreſs, to be impriſoned till paid; and if any rent ſhall be unpaid for 14 days, the commiſſioners may withdraw the licence. 9 *An.* *c.* 23. *ſ.* 12.

And moreover, the breach of the bye-laws, and of theſe rules and orders, may be puniſhed by any juſtice of the peace, mayor, bailiff, or other magiſtrate, where the offence ſhall be committed, in like manner as by the commiſſioners. 9 *An.* *c.* 23. *ſ.* 17. 1 *G. ſt.* 2. *c.* 57. *ſ.* 7. 4 *G.* 3. *c.* 36. 7 *G.* 3. *c.* 44. *ſ.* 19. 10 *G.* 3. *c.* 44. *ſ.* 7.

And every licenſed perſon who ſhall neglect or refuſe (being duly ſummoned for that purpoſe) to appear by himſelf or his renter, ſhall forfeit 10*s.* to be recovered as the other penalties; and if ſuch licenſed perſon ſhall neglect or refuſe to appear, together with his renter, upon the third ſummons, the complaint may be heard and determined in his abſence. 10 *G.* 3. *c.* 44. *ſ.* 6.

And if any owner of a licenſed hackney coach, ſhall refuſe or neglect to appear with his driver before the commiſſioners upon the third ſummons left at his uſual place of abode, the ſaid commiſſioners may revoke ſuch licence, and licenſe another perſon in his room. 24 *G.* 3. *ſeſſ.* 2. *c.* 27. *ſ.* 3.

And all penalties levied by any juſtice, mayor, bailiff, or other magiſtrate, ſhall by them be tranſmitted to the receiver general of the duties on hackney coaches and chairs, and they ſhall alſo tranſmit a certificate thereof to the commiſſioners, within ten days after levying ſuch penalty, on pain of 10*l.* half to the king, and half to him that ſhall ſue. 10 *G.* 3. *c.* 44. *ſ.* 8.

No coach to ply for hire in *New* or *Old Bond Street.*

And by 32 *G.* 3. *c.* 62. No perſon ſhall ſtand and ply for hire with any hackney coach within either *New* or *Old*

Old Bond-ſtreet in the pariſh of *St. George, Hanover Square.* And if any perſon ſhall drive, ſtand with, and ply for hire, with any ſuch coach in either of the ſaid ſtreets; he ſhall on conviction, on the oath of one witneſs, within 7 days, either before the commiſſioners, or one juſtice, forfeit not exceeding 40s. nor leſs than 10s. half to the informer, and half to the poor of the ſaid pariſh; which if not paid, ſuch offender ſhall be committed to the houſe of correction to hard labour, not exceeding one month, nor leſs than ſeven days, unleſs ſuch penalty be ſooner paid. *ſ.* 2, 3.

[Note; the clauſe in the act of the 12 *G. c.* 12. abovementioned, was only to continue for 18 years; but by the 16 *G.* 2. *c.* 26. it was continued to *June* 24, 1760, *&c.* and by the 33 *G.* 2. *c.* 25. is further continued during ſuch time as any former act relating to the licenſing of hackney coaches or chairs, or any part thereof, ſhall be in force.]

Which acts, as to the time of their continuance, ſeem to ſtand thus: The 9 *An. c.* 23. ſo far as it relates to this ſubject, was made to continue for 32 years; and the 10 *An. c.* 19. ſo far as it relates to this ſubject, was made to continue for 31 years; the 1 *G. ſt.* 2. *c.* 57. which explains and amends the 9 *An. c.* 23. doth conſequently attend the fate of the ſame act of the 9 *An.* Now the 3 *G. c.* 7. *ſ.* 1. made the ſaid duties perpetual, (ſubject to redemption by parliament,) and perpetuates in like manner all the clauſes in the ſaid acts for the recovery of the ſaid duties. The 16 *G.* 2. *c.* 26. (by miſtake, as it ſeemeth) recites the ſaid acts as temporary only, and continues them along with the ſaid act of the 12 *G.* to *June* 24, 1760, *&c.* And the 33 *G.* 2. *c.* 25. reciting the duties as perpetual, (ſubject to redemption by parliament as aforeſaid,) ſeemeth to ſuppoſe, that nevertheleſs the clauſes in the ſaid acts for the recovery of the ſaid duties are only temporary and near expiring; and therefore enacteth, that the ſeveral clauſes in the ſaid acts relating to the power of the commiſſioners and juſtices for the recovery of the ſaid duties, ſhall be in force during ſuch time, as any other part of the ſaid acts relating to the licenſing of hackney coaches or chairs ſhall be in force (that is, as it ſeemeth, until the ſaid duties ſhall be redeemed by parliament).

Hair powder.

[N. B. The manner of making hair powder, and the exciſe duty thereon: See title **Exciſe.** (Starch), &c. And head **Perfumery.**]

Duty.

BY 35 *G.* 3. *c.* 49 After 5th of *May* 1795, every perſon who ſhall uſe or wear any powder commonly called *hair powder*, of whatever materials the ſame ſhall be made, ſhall previouſly enter his or her name and place of abode, and annually take out a certificate thereof, upon which ſhall be charged a ſtamp duty of 1l. 1s. *ſ.* 1.

And for every pound or leſs quantity of hair powder not exceeding the value of 2s. a pound there ſhall be paid 1d. 26 *G.* 3. *c.* 49. *ſ.* 1.

What ſhall be deemed hair powder.

And every ſort or compoſition of powder which ſhall be uſed or worn by any perſon as an article of dreſs, by whatever name the ſame ſhall be diſtinguiſhed, ſhall be deemed hair powder within the meaning of this act. 35 *G.* 3. *c.* 49. *ſ.* 2.

Perſons exempted.

But nothing herein ſhall extend to the *royal family* or their immediate ſervants; nor to any *clergyman* who ſhall not be poſſeſſed of an annual income of 100l. or upwards, whether ariſing from eccleſiaſtical preferment or otherwiſe; nor to any *diſſenting preacher* in holy orders, or pretended holy orders, entitled to the benefit of 1 *W.* & *M.* *c.* 18. 19 *G.* 3. *c.* 44. or to 31 *G.* 3. *c.* 32. reſpecting papiſts, who ſhall not be poſſeſſed of an annual income of 100l. a-year or upwards, however ariſing; nor to any *ſubaltern* or *non-commiſſioned officer* or *private man*, belonging to the *army*, *artillery*, *militia*, *marines*, *engineers*, or *fencibles*; nor any *officer of the navy* under the rank of commander; nor any *officer* or *private man* in any corps of *yeomanry* or *volunteers* raiſed by virtue of 34 *G.* 3. *c.* 31. *ſ.* 3, 4, 5. 7.

Benefices of clergymen how to be eſtimated.

Provided, that where any ſuch perſon ſhall be a beneficed clergyman, the income ariſing from his benefice ſhall be eſtimated on the average amount thereof as nearly as may be for ſeven years next preceding. *ſ.* 30.

Perſons having more than two daughters unmarried.

Provided alſo, than any perſon who ſhall have *more than two daughters unmarried*, ſhall be at liberty, on paying the duty for *two*, to have a certificate for the whole number, of whom he ſhall give an account. *ſ.* 6.

To be under the ſtamp officers.

This duty to be under the management of the commiſſioners for ſtamps, who are to appoint under officers. *ſ.* 8, 9.

Perſons liable are to make entry, and have a certificate.

And every perſon liable to the duty, ſhall make entry with the diſtributor of ſtamps, or his deputy, or perſon appointed to receive the ſame, and give an account in writing, which ſhall contain his name and place of abode, and whether he is a houſekeeper, or one of the family, or a lodger, inmate, apprentice, or ſervant abiding in the houſe of any perſon; with the day, month, and year of delivering the ſame; and ſuch diſtributor, or deputy, or perſon ſo appointed, ſhall, upon payment of the duty, iſſue a certificate in the form and manner ſpecified in the act (*a*). *ſ.* 10.

How long certificates ſhall continue.

And every certificate ſhall determine on 5th *April* in the year for which the ſame ſhall be iſſued, and if taken out after 5th *May* 1795, or within one calendar month afterwards for the year 1795, [which by 35 *G.* 3. *c.* 112. is further extended to 20th *July* 1795,] or in any ſubſequent year, for the year in which the ſame ſhall be iſſued, ſhall be in force until and upon the 5th *April* then next following, and ſhall commence from the date thereof; and every certificate taken out for any year ſubſequent to the year in which the ſame ſhall be iſſued, ſhall commence from 5th *April* then next enſuing, and continue in force until and upon 5th *April* in the ſucceeding year. *ſ.* 11.

All perſons in the ſame houſe may be put in one account.

And the names of all or any number of perſons reſiding in the ſame houſe may be included in one account, or may be ſeparate, at the option of ſuch perſons, but a ſeveral certificate ſhall in every caſe be iſſued in reſpect to each perſon. *ſ.* 12.

Maſters paying for ſervants to have a certificate, which ſhall extend to their ſucceſſors in the ſame capacity.

Provided always, that when any maſter ſhall declare his intention to pay the duty for any ſervant, and ſhall deliver in manner aforeſaid an account of the capacity in which he is kept, he may take out a certificate in reſpect of ſuch ſervant upon payment of the duty, which ſhall ſet forth in words at length, the particular capacity in which ſuch ſervant ſhall be hired, and ſhall ſerve; and ſuch certificate ſhall be deemed to extend to the ſervant named therein during his continuance in the ſame ſervice, and alſo to every ſervant who ſhall, during the continuance of ſuch

---

(*a*) There is a form in the act, which it is thought unneceſſary to inſert here.

certificate,

certificate, come in his room to ſerve in the ſame capacity, without taking out any other certificate. *ſ.* 13.

Books to be prepared and certificates delivered without fee.

And the commiſſioners ſhall prepare books containing certificates, and the diſtributors, on payment of the duty, ſhall fill up and deliver out certificates to every perſon requiring the ſame, in manner aforeſaid, without fee. *ſ.* 14.

Diſtributors to return books of certificates to the commiſſioners, who ſhall tranſmit liſts of perſons therein to the clerks of the peace, &c.

And the diſtributors and officers aforeſaid ſhall return the ſaid books wherefrom the certificates were cut to the commiſſioners who ſhall tranſmit alphabetical liſts annually before the firſt of *November*, of the perſons who have obtained certificates, to the clerk of the peace, town clerk, ſheriff depute, or ſteward clerk, or their reſpective deputies, of every county or place; which liſts ſhall be open to inſpection at all ſeaſonable hours at the head office of ſtamps, or at the reſpective offices of ſuch clerks of the peace or other perſons aforeſaid, on payment of ſix-pence and no more; and the ſaid commiſſioners, clerks of the peace and other officers reſpectively, are required, upon demand, to deliver copies of ſuch liſts or parts of liſts in their poſſeſſion, to any perſon whatſoever, to be certified and ſigned by them reſpectively, for which three-pence only ſhall be charged, unleſs ſuch copies ſo demanded ſhall contain the entries of two or more perſons, in which caſe there ſhall be paid ſix-pence for every two perſons whoſe names are certified therein; which liſts and parts thereof, and copy ſigned as aforeſaid, ſhall at all times and places be allowed as legal evidence of a certificate having been obtained by the perſon whoſe name ſhall be certified therein; and ſuch copy may be required by any juſtice before whom any proſecution ſhall be depending to be delivered *gratis*, on notice in writing being left at the office of the ſaid commiſſioners, clerks of the peace, or officers aforeſaid, or their deputies, to whom reſpectively the ſame ſhall appertain. *ſ.* 15.

Liſts and copies to be admitted as evidence.

Copies may be required by juſtices.

Clerks of the peace, &c. to tranſmit copies of liſts to pariſh officers, to be by them affixed on the church doors, &c.

And the reſpective clerks of the peace and officers aforeſaid, or their deputies, ſhall, within ſix weeks after the receipt of the copy of ſuch liſt, make out correct liſts of every perſon named therein for each city or town, pariſh, and place, within ſuch county, and ſhall, within the ſaid period or ſeven days after, tranſmit the ſame to the churchwardens or overſeers of the poor, conſtables, or other peace officers, of ſuch place, or one of them; who ſhall, within three days after the receipt of ſuch liſts, cauſe an exact copy thereof to be affixed on the church or chapel doors and market-croſs (if any) of ſuch city, town, pariſh, or place, and if ſuch place ſhall not have a church or chapel, then on the

church or chapel door of the next adjoining parish, and shall cause the same to be from time to time replaced for four weeks then next ensuing if necessary, with other copies in like manner. *s.* 16.

Stamp officers may appoint persons to do the same.

And by 38 *G.* 3. *c.* 85. all matters and things required to be done by clerks of the peace and officers aforesaid, may be executed by persons appointed by the commissioners of stamps; who shall be entitled to the like fees and allowances and no other, and shall be subject to the like fines and penalties as such clerks of the peace and officers aforesaid. *s.* 2.

Penalty on defacing such copies.

And every person who shall wilfully tear, deface, or remove any such copy so affixed within the said four weeks, shall forfeit for every offence 40 *s.* on conviction before a justice, half to such parish officers, and half to the informers. 34 *G.* 3. *c.* 31. *s.* 16.

Penalty for wearing powder without, or transferring or fraudulently using certificates.

And if any person shall use or wear as an article of dress, any such hair powder without having obtained such certificate as aforesaid, he shall, for every such offence, forfeit 20 *l.* to be sued for and recovered in the county or place where such offender shall be. And if any person having obtained any such certificate, shall afterwards sell, transfer, assign, or deliver the same, to any other person, with intent that the same shall be fraudulently made use of; or shall fraudulently use any such certificate in order to evade the duty, he shall, for every such offence, forfeit 30 *l.* *s.* 17.

Foreigners.

Provided, that no person who shall come into this kingdom from foreign parts, shall be required to obtain a certificate until after 21 days next after his arrival; and the proof of the time of such arrival shall lie upon such person. *s.* 18.

Rewards to clerks of the peace, constables, &c.

And such clerks of the peace and other officers aforesaid, may be rewarded for their trouble by the commissioners of the stamp duties, as they shall think fit, over and above their expences; and such reasonable rewards shall be given to such constable, or other parish and peace officers as such commissioners shall authorize, to be paid by such clerks of the peace or officers aforesaid employing them, to be charged in their accounts with the said commissioners. *s.* 19.

Penalty for neglect of duty.

And if any officer appointed in pursuance of this act, shall neglect to perform his duty, or shall commit or suffer any undue or fraudulent practices in the execution of such office, he shall, on conviction, forfeit 50 *l.* for every such offence. *s.* 20.

And

And every ſurveyor of houſes and windows ſhall, within 14 days of 5th *April* yearly, give or leave notice to or for every occupier of any dwelling houſe, where any perſon liable to this duty ſhall reſide within his limit, at his dwelling houſe, and where ſuch houſe ſhall be divided into different ſtories or apartments, and occupied diſtinctly by ſeveral perſons, then to or for the occupier of each diſtrict, ſtory, or apartment; to prepare and produce within 14 days next enſuing the day of giving ſuch notice, a liſt in writing to the beſt of his belief, of the name of every perſon reſident in ſuch houſe and liable to this duty, who ſhall, within the year ending the 5th day of *April* preceding, (and by 35 *G.* 3. *c.* 112. *ſ.* 2. the firſt liſt ſhall contain ſuch perſons only as have worn hair powder, between 25th *July* 1795, and 5th *April* 1796,) have uſed or worn hair powder, and the ſituation of ſuch perſon in reſpect of the family or families in ſuch houſe; in which liſt, all perſons of the family, and all apprentices, ſervants, lodgers, and inmates, which, to the beſt of his knowledge or belief, are liable to the duty, whether they have certificates or not, ſhall be included; and every ſuch occupier ſhall, after ſuch notice, make out ſuch liſt, and ſign the ſame; and ſhall alſo at the ſame time, make a declaration ſigned by him, of the county or place where ſuch occupier ſo reſident ſhall have obtained, or doth intend to obtain his certificate, and whether for himſelf only or for any part of his family or ſervants, and deliver the ſame to ſuch ſurveyor; on pain of forfeiting 20*l.* for every ſuch offence; and ſhall be liable to proſecution for every ſuch offence, and be deemed guilty thereof, whether the perſon ſo omitted, or not returned, hath or hath not a certificate, or been proſecuted for any ſuch offence, or is or is not amenable to juſtice for any offence againſt this act; and that the conviction of any ſuch occupier for any ſuch neglect or omiſſion ſhall not be deemed to exempt the perſon ſo omitted or not returned from paying the duty, or from proſecution or puniſhment for any offence againſt this act. *ſ.* 21.

Window ſurveyors to give notice to occupiers of houſes to produce liſts of reſidents therein who have worn powder.

On the penalty of 20*l.*

But no perſon ſhall be required to include in ſuch liſt, any perſon reſident in his houſe, who hath a place of uſual reſidence elſewhere in *Great Britain*. *ſ.* 23.

Perſons who have uſual reſidence elſewhere, need not be included.

And every ſuch ſurveyor ſhall tranſmit ſuch liſts ſo delivered to him to the commiſſioners for the affairs of taxes at their office in *Middleſex*, who ſhall tranſmit a copy thereof to the commiſſioners of the ſtamp duties. *ſ.* 22.

Surveyors to tranſmit liſts to the commiſſioners of taxes, &c.

Penalties may be ſued for.

All penalties hereby impoſed may be ſued for in the courts at *Weſtminſter*, and (if within three calendar months) ſhall be applied half to the king, and half with full coſts to him who ſhall inform or ſue (except where other proviſions are expreſsly made). If after three months, the whole ſhall go to the king. *ſ.* 25, 26.

Penalties not exceeding 20l. may be recovered before a juſtice.

But where the penalty ſhall not exceed 20l. the ſame may be recovered before any neighbouring juſtice, who on complaint (A.) within three calendar months after the offence committed, may ſummon (B.) the party accuſed, giving to each party three days' notice to appear, as alſo the witneſſes on either ſide, and upon proof, by confeſſion, or by the oath of one witneſs, or otherwiſe as the caſe may require, may give judgment (C.) for the penalty; to be divided, half to the poor where the offence is committed, and half to the informer; and may be levied (D.) on the goods of the offender, which may be ſold if not redeemed within ſix days; and in default of ſufficient diſtreſs, the offender may be committed (E.) to priſon for not exceeding ſix nor leſs than three calendar months, unleſs ſuch penalty be ſooner paid. *ſ.* 27.

Appeal.

If either party think himſelf aggrieved, he may, upon giving ſecurity to the amount of the penalty, together with ſuch coſts as may be awarded in caſe ſuch judgment be affirmed, appeal to the next ſeſſions which ſhall happen after 14 days next after ſuch conviction, giving reaſonable notice, who may ſummon witneſſes, and finally hear and determine the ſame; and in caſe ſuch judgment be affirmed, they may award the perſon ſo appealing to pay ſuch coſts as to them ſhall ſeem meet. *Id.*

The hearing may be adjourned where it is alleged that a certificate hath been taken out in another place.

Provided, that where any perſon accuſed of wearing hair powder without a certificate, ſhall inſiſt in his excuſe before ſuch juſtice that he has obtained a certificate in any other county or place, and ſhall, on his oath, ſet forth the county or place, and time of obtaining the ſame; ſuch juſtice, at his requeſt, may adjourn the hearing and determination until a future time, in order that he may produce his certificate or entry or copy thereof under the hand of the proper officer as herein directed; and if at the end of ſuch time, ſuch perſon ſhall not produce the ſame, ſuch juſtice ſhall proceed to the hearing and determination of ſuch complaint in manner before directed. *Id.*

Penalties may be mitigated.

Provided nevertheleſs, that ſuch juſtice where he ſhall ſee cauſe, may mitigate any ſuch penalties as he ſhall think fit (reaſonable coſts and charges of the officers and informers

formers as well in making the diſcovery as in proſecuting the ſame, being always allowed over and above ſuch mitigation) ſo as ſuch mitigation do not exceed one moiety of the penalty over and above the coſts. *ſ.* 27.

Witneſſes neglecting to appear, being duly ſummoned, without a reaſonable cauſe, to be allowed by ſuch juſtice, or refuſing to be examined on oath, ſhall forfeit 40 s. to be levied in manner aforeſaid. *ſ.* 38. Witneſſes neglecting to appear.

And the conviction may be made out in the form (G.), or to the like effect; and ſhall be wrote on parchment and returned to the next ſeſſions, there to be filed and kept; and ſhall not be removed by *certiorari* or other proceſs into any court whatſoever. *ſ.* 39. Conviction.

And upon all proſecutions for non-payment of this duty, the proof ſhall lie upon the perſon claiming the exemption, who ſhall be permitted to allege the ſame upon his oath or affirmation, or other ſufficient evidence. *ſ.* 30. Proof to lie on the perſon claiming the exemption.

Perſons counterfeiting or forging ſtamps, ſhall be guilty of felony without benefit of clergy. *ſ.* 31. Counterfeiting or forging ſtamps.

A. Information.

Weſtmorland. *THE information of* A. I. *of* ——— *in the county of* ——— yeoman, *exhibited to and before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county of* ———, *reſiding near the place where the offence was committed, the* ——— *day of* ——— *in the year* ———, *at* ——— *in the ſaid county of* ———, *who ſaid that* A. O. *of* ——— *in the ſaid county of* ——— gentleman, *on the* ——— *day of* ——— *now laſt paſt, at* ——— *in the ſaid county of* ———, *did, contrary to the form of the ſtatute in that caſe made and provided, uſe and wear as an article of his dreſs, a certain powder commonly called hair powder, without then having obtained the certificate required by law for that purpoſe* [or as the caſe may be]; *whereby, and by force of the ſaid ſtatute, the ſaid* A. O. *hath forfeited the ſum of* 20 l. *of lawful money of* Great Britain, *for the offence aforeſaid* [or as the penalty may be]. *And thereupon the ſaid* A. I. *prayeth the judgment of me the juſtice aforeſaid in the premiſes, according to the form of the ſtatute in that caſe made and provided.* A. I.

B. Sum-

B. Summons.

Weſtmorland. { To the conſtable of —— in the ſaid county.

WHEREAS an information hath been exhibited to and before me J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* —— *that* A. O. *of* ——— *in the ſaid county of* ——— gentleman, *on the* —— *day of* ——— *now laſt paſt, at* —— *in the ſaid county of* ———, *did, contrary to the form of the ſtatute in that caſe made and provided, uſe and wear as an article of his dreſs, a certain powder commonly called hair powder without then having obtained the certificate required by law for that purpoſe* [or as the caſe may be]; *whereby, and by force of the ſaid ſtatute, the ſaid* A. O *hath forfeited the ſum of* 20l. *of lawful money of* Great Britain *for the offence aforeſaid* [or as the penalty may be]; *Theſe are therefore to require you forthwith to ſummon the ſaid* A. O. *to appear before me at* —— *in the ſaid county of* ———, *the* —— *day of* ———, [giving the parties three days' notice at leaſt,] *at the hour of* —— *in the forenoon of the ſame day, to anſwer to the ſaid information, and to be further dealt with according to law. And be you then there to certify what you ſhall have done in the execution hereof; herein fail you not. Given under my hand and ſeal, at* —— *in the ſaid county of* ——, *the* —— *day of* ——— *in the year of our Lord* ———.

C. Conviction. Taken from the form in the act.

BE *it remembered that on the* —— *day of* —— *in the year of our Lord* —— *in the county of* ——, A. O. *of* ———, *was convicted before me* J. P. *one of his majeſty's juſtices of the peace for* ———, *reſiding near the place where the offence was committed, for that he the ſaid* A. O *on the* —— *day of* —— *now laſt paſt, did, contrary to the form of the ſtatute in that caſe made and provided* [here ſtate the offence againſt the act]; *and I do declare and adjudge that the ſaid* A. O. *hath forfeited the ſum of* —— l. *of lawful money of* Great Britain *for the offence aforeſaid, to be diſtributed as the law directs. Given under my hand and ſeal the* ——— *day of* ———.

D. War-

D. Warrant of diſtreſs.

Weſtmorland. { To the conſtable of —— in the ſaid county.

WHEREAS, by a certain record of conviction under my hand and ſeal, bearing date the —— day of —— now laſt paſt, A. O. *of —— in the ſaid county of ——* gentleman, *was and is duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of ——, for that the ſaid* A. O. *on the —— day of —— now laſt paſt, at —— in the ſaid county of ——, did, contrary to the form of the ſtatute in that caſe made and provided, uſe and wear, as an article of his dreſs, a certain powder commonly called hair powder, without then having obtained the certificate required by law for that purpoſe,* [or as the caſe may be,] *and I did thereby declare and adjudge, that the ſaid* A. O. *hath forfeited the ſum of* 20l. *of lawful money of* Great Britain *for the offence aforeſaid* [or as the penalty may be]. *Theſe are therefore to require you to levy the ſaid ſum of* 20l. *by diſtreſs of the goods of the ſaid* A. O. *and if within the ſpace of ſix days next after ſuch diſtreſs by you taken, the ſaid ſum of* 20l. *together with the reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay one moiety of the ſaid ſum of* 20l. *to* A. I. *of —— in the ſaid county of ——* yeoman, *who informed me of the ſaid offence, and the other moiety thereof to the overſeers of the poor of the pariſh of —— aforeſaid, where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh* [or as the caſe may be]; *rendering to the ſaid* A. O. *the overplus (if any,) the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted; and if ſufficient diſtreſs cannot be had of the goods of the ſaid* A. O. *that then you do certify the ſame to me, together with the return of this precept. Given under my hand and ſeal, at —— in the ſaid county of ——, the —— day of —— in the year of our Lord ——.*

E. Commitment for want of diſtreſs.

Weſtmorland. { To the conſtable of —— in the ſaid county, and to the keeper of —— at —— in the ſaid county.

WHEREAS, by a certain record of conviction under my hand and ſeal, bearing date the —— day of ——

now

now last past, A. O. *of* ——— *in the said county of* ——— gentleman, *was and is duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* ———, *for that the said* A. O. *on the* —— *day of* ——— *now last past, at* —— *in the said county of* ——, *did, contrary to the form of the statute in that case made and provided, use and wear as an article of his dress a certain powder commonly called hair powder, without then having obtained the certificate required by law for that purpose* [or as the case may be,] *and I did thereby declare and adjudge that the said* A. O. *hath forfeited the sum of* 20*l. of lawful money of* Great Britain *for the offence aforesaid; and whereas, on the* —— *day of* —— *now last past, I did issue my warrant to the constable of* ——— *to levy the said sum of* 20*l. by distress and sale of the goods of him the said* A. O. *and to apply the same according to law; and whereas it duly appears to me, on the oath of* —— *the constable of* ——— *aforesaid, that he the said constable hath used his best endeavours to levy the said sum of* 20*l. on the goods of the said* A. O. *as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of* ——— *aforesaid, to apprehend the said* A. O. *and him safely to convey to* —— *at* —— *in the said county, and there to deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said* —— *to receive into your custody in the said* —— *the said* A. O. *and him there safely to keep for the space of* ———, *unless the said sum of* 20*l. shall be sooner paid and satisfied; and for so doing this shall be your sufficient warrant. Given under my hand and seal, at* ——— *in the said county of* ———, *the* —— *day of* ——— *in the year of our Lord* ——.

Harbour filling up. See **Rivers and Navigation.**
Hares. See **Game.**
Harepipes. See **Game.**

Hats.

Licence for retailing.

BY 24 *G.* 3. *c.* 51. *sess.* 2. All retailers of hats commonly called *felt* or *wool*, *stuff* or *beaver* hats, or any *leather* or *japanned* hats, shall take out a licence from the stamp officers, for which shall be paid, within the bills 40*s.* elsewhere 5*s.* which licence shall be renewed annually ten days at least before the end of the year. *s.* 1, 2. 4.

And if any retailer ſhall ſell any ſuch hats without a licence, he ſhall forfeit 50l. *ſ.* 3. Penalty.

Every perſon who ſhall ſell any leſs quantity than one dozen of hats at one time to any one perſon, ſhall be deemed a retailer. *ſ* 7. Who ſhall be deemed retailers.

And every licenſed retailer ſhall cauſe the words *Dealer in hats by retail* to be put up over the door, or in the front of his houſe or ſhop; on pain that if he ſells any hat without fixing ſuch notice, he ſhall forfeit 40s. *ſ.* 5. Certain words to be put up.

And if any unlicenſed perſon ſhall put up theſe words, he ſhall forfeit 50l. *ſ.* 6.

And for every hat which ſhall be ſold by ſuch licenſed retailer ſhall be paid, Duty on hats.

	s.	*d.*
If not exceeding the value of 4s. a duty of	0	3
Above 4s. and not exceeding 7s. -	0	6
Do. 7s. 12s. -	1	0
All above 12s. - - -	2	0

ſ. 1.

By the 36 *G.* 3. *c.* 125. ſo much of the above act as relates to the iſſuing and fixing ſtamped tickets on hats, and the proviſions for enforcing the collection of the ſaid duties, are repealed. *ſ.* 1. Part of the above act repealed.

And from and after the 5th day of *Auguſt* 1796, the duty impoſed by the ſaid act of 24 *G.* 3. as above, ſhall be calculated at and according to the full price and value of the hats in reſpect of which ſuch duty ſhall be charged, and of all the mountings and other ornaments (except gold and ſilver lace) ſold or expoſed to ſale therewith; and that every hat made wholly of felt, wool, ſtuff, beaver, or leather, or any mixture thereof, or of any other ſubſtance by whatever name ſuch hat ſhall be called, ſhall be liable to the duties aforeſaid; and every ſuch hat which ſhall be ſold and delivered after 5th *Aug.* 1796, ſhall previous to ſuch delivery be lined or covered in the inſide of the crown thereof with ſilk, linen, or other proper materials whereon a durable mark or ſtamp can conveniently be affixed to denote the ſaid duties, to be provided by the ſtamp officers. *ſ.* 3. Duties how to be calculated. To be ſtamped on the lining.

And the ſaid duties ſhall be under the management of the commiſſioners of the ſtamp duties. *ſ.* 2. To be under the commiſſioners of ſtamps.

And any perſon may bring or ſend to the head office of ſtamps, any quantity of linings cut into ſhapes, to be ſtamped as the perſon bringing the ſame ſhall require, and the ſtamp officers ſhall take an account of the number of ſuch ſhapes, and the duties required to be ſtamped thereon, and ſhall enter the ſame in a book, and ſhall ſtamp one of the pieces of every ſuch lining in ſuch part, and in ſuch manner as that the ſtamp may remain Shapes for linnings to be ſent to the ſtamp-office to be ſtamped.

conſpicuous when affixed to any hat in the manner herein directed, ſuch perſon paying the duties payable for the ſame, ſubject to ſuch diſcount as herein is provided, which ſtamp ſhall be a ſufficient diſcharge that the duty has been paid. *ſ.* 4.

Commiſſioners may open an account with dealers or manufacturers.

And the commiſſioners may open an account with any dealer in, or manufacturer of, linings for hats, on his giving bond to their ſatisfaction for payment of the duties, in not leſs than the penal ſum of 100 l. nor higher than the probable amount of the duty payable by ſuch perſon for not exceeding one year, nor leſs than ſix months, who at the requeſt of ſuch perſon may direct ſuch linings to be ſtamped upon credit, on delivering a writing, ſigned by ſuch perſon, of the quantity of ſuch linings, and the amount and denomination of the ſtamps required; and on the re-delivery of ſuch linings ſo ſtamped and giving a receipt for the ſame, he ſhall be allowed a like diſcount thereon as in caſe of preſent payment. *ſ.* 5.

Dealers may ſell unſtamped hats to one another.

Provided that any licenſed dealer may ſell to any other licenſed dealer any hat wherein no ſtamped lining ſhall be affixed. *ſ.* 6.

Perſons bringing linings to be ſtamped, to declare the uſes of the different parts, and the manner of fixing the ſame in the hat.

And the perſon bringing any linings to be ſtamped, ſhall on requeſt declare the uſes of the different pieces thereof, and alſo the manner of affixing every part thereof; and in what part the ſtamp can be put ſo as to be conſpicuous when affixed in any hat; and on the commiſſioners being ſatisfied therewith, they ſhall cauſe the ſame to be ſtamped, as directed by the perſon bringing the ſame; and three of them may make ſuch regulations as they ſhall think neceſſary to prevent the concealment of ſuch ſtamp, and to prevent the ſtamps ſold from being uſed again; which regulations, fairly printed, ſhall be delivered on application to every ſuch licenſed dealer. *ſ.* 7.

Penalty of 10 l. for ſelling hats unſtamped.

And no perſon (other than ſuch manufacturers and licenſed dealers) ſhall ſell and deliver, or cauſe to be ſold and delivered, any hat ſubject to the ſaid ſtamp duties; or ſhall receive or cauſe to be received any thing, or value, by way of barter or in exchange for any ſuch hat wherein no lining ſhall be then fixed, or wherein the lining therein affixed ſhall not be ſtamped and affixed as directed by this act, or which ſhall be ſtamped with a ſtamp of leſs value than is herein directed; on pain of forfeiting 10 l. *ſ.* 8.

Penalty of 20 l. for affixing ſtampt linings after having been uſed.

And if any perſon ſhall cut or tear out, or cauſe to be cut or torn out from any ſuch hat as aforeſaid, the lining or any part thereof where ſtamped, after the ſame ſhall have been uſed or worn or diſpoſed of with ſuch hat, with intent

to affix the ſame to any other hat, or to defraud his majeſty; or ſhall with like intent affix, or cauſe to be affixed any lining or part thereof where ſtamped, after having been before uſed or worn, or ſold or diſpoſed of therewith; he ſhall forfeit 20l. *ſ.* 9.

Penalty of 10l. for receiving on ſale, or wearing hats unſtamped.

And if any perſon (other than ſuch licenſed dealers asaforeſaid) ſhall receive on ſale after 5th *April* 1797, wear or uſe any hat ſubject to any of the duties aforeſaid, wherein no lining ſhall be affixed at the time of delivery, or when uſed or worn ſhall not be ſtamped as aforeſaid, or ſuch ſtamp ſhall not be placed in a viſible and conſpicuous manner; he ſhall forfeit 10l. *ſ.* 10.

Dealers may ſend lined hats to the office to be ſtamped.

Provided, that any licenſed dealer may ſend any number of hats, not leſs than one dozen at one time, whereon a lining ſhall then be affixed, to be ſtamped, which ſhall be ſtamped in the ſame manner as if the lining only had been brought as aforeſaid. *ſ.* 11.

Dealers may ſell to one another hats unſtamped.

And any licenſed dealer may ſell to any another licenſed dealer, any hat lined as aforeſaid for the purpoſe of ſelling the ſame again for home conſumption, or for exportation, before the lining ſhall have been ſtamped as aforeſaid. *Id.*

Hats worn before 1ſt Auguſt 1796.

Provided always, that no perſon ſhall be ſubject to any penalty hereby impoſed, for uſing or wearing any hat ſtamped as directed by the ſaid act of 24 *G.* 3. which was uſed or worn before 5th *Aug.* 1796. And the proof of the hat having been ſo ſtamped, or of its having been ſo uſed or worn, ſhall lie on the perſon accuſed. *ſ.* 11.

Proof to lie on the owner.

Provided alſo, that if any action, ſuit, or information for any offence in uſing or wearing any hat contrary to this act, any diſpute ſhall ariſe whether the duty impoſed by the ſaid act of 24 *G.* 3. hath been duly paid, the proof of the fact ſhall lie on the owner, or perſon accuſed. *ſ.* 12.

Offender diſcovering the other party, to be freed.

And if any offender againſt this act before conviction, ſhall diſcover the other perſon offending, he ſhall be admitted to give evidence; and if the perſon informed againſt be convicted, he ſhall be freed from any penalty incurred previous to ſuch diſcovery. *ſ.* 13.

Damaged ſtamps to be replaced.

And if any ſtamp or lining ſhall be damaged and ſhall not have been uſed, worn, or ſold with any hat, the commiſſioners, or officers appointed by them, on proof on oath of the fact, may cancel the ſame, and ſtamp others in lieu thereof. *ſ.* 14.

Perſons hawking or carrying about unſtamped hats for ſale.

And if any perſon ſhall hawk, or carry about for ſale, any hat liable to any of the ſaid duties, without lining, or without the lining being ſtamped as aforeſaid, he may be ſeized by any perſon and carried before a juſtice, and the perſon

perſon ſo carrying him, upon conviction of ſuch offender, on confeſſion, or oath of one witneſs, and producing a certificate of ſuch conviction under the hand of ſuch juſtice, (which he is required to give without fee,) ſhall have a reward of 40s. to be paid by the ſtamp officers. And ſuch juſtice may commit ſuch offender, on conviction as aforeſaid, to the houſe of correction, for not exceeding ſix nor leſs than two calendar months. *ſ.* 15.

To be committed.

Diſcount on purchaſing ſtamps to the amount of 10 l.

And the ſtamp officers ſhall allow to every perſon who ſhall purchaſe ſtamps to the amount of 10 l. at one time, ſuch diſcount as the commiſſioners of the treaſury ſhall direct. *ſ.* 16.

Duty to be diſtinguiſhed from the price.

And every perſon who ſhall make a bargain for the ſale of any ſuch hat, or ſhall deliver in any bill or charge for any ſuch hat ſold, ſhall diſtinguiſh the price thereof from the duty payable thereon. *ſ.* 17.

Counterfeiting or forging ſtamps, felony.

And if any perſon ſhall counterfeit or forge any ſuch ſtamp, or ſhall ſell or expoſe to ſale any lining with ſuch counterfeit ſtamp thereon, knowing the ſame; or ſhall privately or fraudulently uſe any ſtamp with intent to defraud his majeſty, he ſhall be guilty of felony without benefit of clergy. *ſ.* 19.

Powers of former acts to extend to this act.

And all powers and proviſions of any former acts relating to ſtamp duties, except hereby altered, ſhall be in full force in the execution of this act. *ſ.* 20.

Penalties how to be recovered.

All pecuniary penalties hereby impoſed, may be recovered with full coſts in the courts at *Weſtminſter:* or any neighbouring juſtice may hear and determine the offence againſt this act which ſubjects the offender to any pecuniary penalty, who, on complaint within ſix calendar months, may ſummon the party accuſed, and alſo the witneſſes on either ſide, and upon examination of the matter of fact, and due proof either by voluntary confeſſion, or oath of one witneſs, may give judgment, and iſſue his warrant to levy ſuch penalty by diſtreſs and ſale if not redeemed within ſix days; and where ſufficient diſtreſs cannot be found, the offender ſhall be committed to the houſe of correction for 3 calendar months, unleſs ſuch penalty be ſooner paid. *ſ.* 22, 23.

Application of the penalties.

All which ſaid penalties, if ſued for or recovered within ſix calender months, ſhall be diſtributed, half to the informer, and half to the king, after firſt deducting the neceſſary charges of recovering the ſame. *ſ.* 21. 23.

Appeal.

If any perſon find himſelf aggrieved by the judgment of ſuch juſtice, he may, upon giving ſecurity to the amount of the penalty, together with the coſts in caſe ſuch judgment be affirmed, appeal to the next ſeſſions, who may ſummon

and

and examine witneſſes upon oath, and finally hear and determine the ſame, and in caſe the judgment be affirmed, they may award the perſon ſo appealing to pay ſuch coſts occaſioned by ſuch appeal as to them ſhall ſeem meet. *ſ.* 23.

Witneſſes not appearing.

And if any perſon ſummoned as a witneſs, ſhall neglect or refuſe to appear at the time and place appointed, without reaſonable excuſe to be allowed by ſuch juſtice, he ſhall forfeit 5 l. to be levied as aforeſaid. *ſ.* 24.

Conviction.

And to avoid frivolous and vexatious appeals, the conviction may be in the following form, or in any other form to the like effect, *mutatis mutandis:*

BE it remembered, that on the ——— day of ——— in the year of our lord ——— A. O. of ——— in the county of ——— was convicted before me J. P. *one of his majeſty's juſtices of the peace for the ſaid county, reſiding near to the place where the offence was committed, for that the ſaid* A. O. *on the ——— day of ——— now laſt paſt, at the ——— of ——— in the ſaid county of ——— did* [Here ſtate the offence againſt the act] *contrary to the ſtatute in that caſe made and provided. Given under my hand and ſeal the ——— day of ———.*

Which conviction ſhall be fairly written on parchment and returned to the next ſeſſions to be there filed. *ſ.* 25.

Mitigation.

Provided nevertheleſs, that where the juſtice ſhall ſee cauſe, he may mitigate any ſuch penalties ſo as not to reduce the ſame lower than one moiety over and above the coſts. *Id.*

Certiorari.

And ſuch conviction ſhall not be removed by *certiorari* into any court whatſoever. *Id.*

Importation and exportation.

And by 27 *G.* 3. *c.* 13. (*Schedule* A.) For every hat made of, or mixed with felt, hair, wool, or beaver, imported, ſhall be paid a duty of 2 l. 4 s. And there ſhall be allowed on exportation a drawback of 1 l. 19 s.

Any licenſed perſon may *export* any number of hats, not leſs in quantity than [one dozen in one package, either lined or unlined, and if lined, then without being ſtamped, 36 *G.* 3. *c.* 125. *ſ.* 18.] upon giving notice to the neareſt diſtributor of the ſtamps, who ſhall grant a certificate thereof. 24 *G.* 3. *c.* 51. *ſeſſ.* 2. *ſ.* 24.

Hare and coney ſkins not to be exported.

And for the encouragement of the hat manufactory, it is enacted by the 24 *G.* 3. *c.* 21. *ſeſſ.* 2. that no hare ſkins, hare wool, coney wool, or undreſſed coney ſkins, ſhall be exported, or loaden upon any horſe, cart, or other carriage, or laid on board any ſhip or boat in order to be ex-

ported, on the penalty of 500l. and the ſame to be forfeited: and every perſon aiding or aſſiſting therein ſhall forfeit 40l. *ſ.* 1, 2.

Nor dyed.

And if any perſon ſhall dye any ſuch ſkins, or ſhall be aiding and aſſiſting therein, he ſhall forfeit 20l.: and ſuch ſkins ſhall be ſeized, together with the machines and other utenſils and apparatus uſed therein, and the ſame ſhall be forfeited. *ſ.* 3.

Goats wool.

And for the further encouragement of the hat manufactory all goats hair or *Turkey* goats wool may be imported duty free. *ſ.* 6.

All penalties by this act impoſed are to be recovered in the ſame manner as directed by the acts for preventing frauds in the revenues of the cuſtoms, and ſhall be applied half to the king and half to him that ſhall ſue, which ſhall be within the county where the offence was committed. *ſ.* 4, 5.

Hawkers and pedlars.

Licence duty.

BY the 29 *G.* 3. *c.* 26. *ſ.* 3. There ſhall be paid by every hawker, pedlar, petty chapman, or any other trading perſon, going from town to town, or to other men's houſes, and travelling either on foot, or with horſe, horſes, or otherwiſe, within the kingdom of *England* (except as therein after excepted), carrying to ſell, or expoſing to ſale any goods, wares, or merchandizes, a duty of 4l. for each year.

And for every horſe, aſs, or mule, or other beaſt bearing or drawing burthen, the ſum of 4l. yearly, for each beaſt he ſhall ſo travel with, over and above the ſaid firſt mentioned duty of 4l. *Id. ſ.* 3.

Duty to be paid on taking out the licence.

And every ſuch hawker, pedlar, or other perſon, ſhall at the time of receiving his licence, pay, without any diſcount whatſoever, all the aforeſaid duties, to the commiſſioners for licenſing hawkers and pedlars, or to ſuch perſon as they ſhall authorize; and upon payment thereof, and not otherwiſe, a licence ſhall be granted, ſubſcribed by two of the ſaid commiſſioners. *Id. ſ.* 5.

Certificate to be produced.

And before any perſon ſhall be licenſed, he ſhall produce a certificate ſigned by one clergyman officiating within the pariſh or place where he uſually reſides, and two reputable inhabitants of the ſame place, atteſting that

ſuch

ſuch perſon is of good character and reputation, and fit to be licenſed. *ſ.* 6, 7.

And ſuch certificate may be in the form, or to the effect following:

We A. B. *the Miniſter, and* C. D. *and* E. F. *being two houſeholders reſiding at* ——— *in the pariſh* (or as the caſe may be) *of* ——— *in the county of* ——— *do hereby certify that* G. H. *hath been known to us for the ſpace of* —— *years laſt paſt, and during all that time hath uſually reſided in the ſaid pariſh* (or as the caſe may be) *of* ——— *and is a perſon of good character and reputation, and is a fit perſon to be licenſed to exerciſe the trade of a hawker, pedlar, and petty chapman. Dated, &c.*

A. B. Miniſter.
C. D. } Houſeholders.
E. F. }

Trading perſons going from town to town] *T.* 31 *G.* 2. *Rex* v. *Little.* The conviction being removed by certiorari, did ſet forth, that one *Thomas Preſton*, gentleman, came before the juſtice, and informed him, that the defendant *Thomas Little*, in the pariſh of *St. Mary*, in the city and county of the city of *Litchfield*, was found offering to ſale ſilk handkerchiefs, and trading as a hawker, pedlar, or petty chapman; and that the ſaid *Thomas Little* did not, although required ſo to do, produce any licence as the law in that caſe directs: That the ſaid *Thomas Little*, being brought before the juſtice doth confeſs, that he the ſaid *Thomas Little* did offer to ſell ſilk handkerchiefs to the ſaid *Thomas Preſton*, in ſuch manner as is mentioned in the aforeſaid information; and that he had no licence for ſelling therof: Whereupon the juſtice doth adjudge, that the ſaid *Thomas Little* is an hawker within the true intent and meaning of the ſtatute in that caſe made, and is guilty of the offence in the ſaid information laid to his charge.——It was moved to quaſh this conviction, upon two exceptions; 1. With reſpect to the perſon; that he is not brought within the deſcription of the acts, as going from town to town, and travelling on foot, or with horſe, horſes, or otherwiſe: but he is only generally deſcribed to be a perſon that traded as an hawker and pedlar, and offered to ſell a parcel of ſilk handkerchiefs to the informer. 2. With reſpect to the offence; the evidence is the defendant's own confeſſion; and the confeſ-

ſion extends no farther than barely to the ſimple fact of offering to ſale ſilk handkerchiefs in ſuch manner as is charged upon him.——By L. *Mansfield* Ch. J. A ſingle act of ſelling a parcel of ſilk handkerchiefs to a particular perſon, is not a proof that he was ſuch a hawker, pedlar, or petty chapman, as ought to take out a licence, by virtue of the acts of parliament. It is certainly of the eſſence of the crime of not producing a licence, that he muſt be ſuch a perſon as ought to take out a licence. And the confeſſion is only of the fact, that he offered to ſell the handkerchiefs to *Thomas Preſton*; not that he traded as an hawker. Convictions ought to be taken ſtrictly; and it is reaſonable that they ſhould be ſo, becauſe they muſt be taken to be true againſt the defendant. I do not ſay, that it is neceſſary to define exactly, what a hawker, pedlar, or petty chapman is. But it is neceſſary to allege and ſhew that he ſold the goods, or traded as one.——Mr. J. *Deniſon* concurred, for the ſame reaſons; and thought the material averment to be here wanting; it not being averred that he was ſuch a hawker, pedlar, or petty chapman, as ought to take out a licence.——By Mr. J. *Wilmot* (Mr. J. *Foſter* being abſent): I am clearly of the ſame opinion. For certainly a man may ſell goods as a hawker, pedlar, or petty chapman, without being ſuch a perſon as is obliged to take out a licence. And if he is not obliged to take out a licence, moſt undoubtedly he ought not to be convicted in a penalty for not producing one. Now here, it appears to me, that the juſtice hath convicted the man of an offence, of which he hath not proved him to be guilty. And by the court unanimouſly, the conviction was quaſhed. *Bur. Mansf.* 609.

Spirituous liquors and teas.

Expoſing to ſale any goods, wares, or merchandizes] But by the 9 *G.* 2. *c.* 35. he ſhall not, by virtue of ſuch licence, ſell or offer to ſell any *tea* or *ſpirituous liquors* (although he have a permit with the ſame); but the perſon to whom the ſame ſhall be offered, may ſeize and carry the ſame to the next warehouſe, and may ſeize the offender and carry him before a juſtice, to be by him impriſoned and proſecuted for the penalties incurred for ſelling or offering the ſame to ſale without licence. *ſ.* 20.

Not to ſell by auction.

And by 29 *G.* 3. *c.* 26. No hawker or pedlar, &c. ſhall ſell any goods or merchandize, by outcry, knocking down of hammer, candle lot, parcel, or other mode of ſale at auction, whereby the higheſt bidder ſhall be deemed the purchaſer:

purchaſer: either on his own account, or upon commiſſion, or otherwiſe howſoever, on pain of forfeiting 50l. ſ. 4.

And by the 7 G. 3. c. 43. if any *foreign cambrick* or *French lawn* ſhall be found in the poſſeſſion of any hawker, pedlar, or petty chapman; he ſhall forfeit the ſame, and alſo all the other goods in his pack, and ſhall alſo be adjudged to have forfeited his licence: half the ſaid goods to be diſpoſed to the uſe of the king, and half to the officer who ſhall ſue for the ſame; and if no officer ſhall ſue within one month, then any other perſon may ſue. Foreign goods.

And every ſuch licenſed perſon ſhall cauſe to be written, painted, or printed in large legible *Roman* capitals upon the moſt conſpicuous part of every pack, box, bag, trunk, caſe, cart, waggon, or other vehicle of conveyance in which he ſhall carry his goods; and of every room and ſhop in which he ſhall ſo trade; and likewiſe upon every hand-bill, or advertiſement which he ſhall give out, diſtribute, or publiſh, the words LICENSED HAWKER, together with the number, name, or mark of diſtinction written on his licence, on pain of forfeiting 10l. ſ. 8. Packs, &c. to be marked with certain words.

And if any perſon not licenſed as aforeſaid, ſhall write, paint, or print, or keep, or continue the ſame upon any ſuch pack, bag, box, trunk, caſe, cart, waggon, or other vehicle or conveyance; or in any room or ſhop in which he ſhall ſell, expoſe, or keep for ſale, any ſuch goods, the words LICENSED HAWKER, or LICENSED PEDLAR, or words to that effect, he ſhall forfeit 10l. ſ. 9. Unlicenſed perſons marking their packs, &c.

And if any ſuch hawker, or other trading perſon, ſhall be convicted of dealing in, or ſelling any kind of ſmuggled, contraband, or prohibited goods, or which have been fraudulently or diſhoneſtly procured, either by themſelves or others with their knowledge; he ſhall from and after ſuch conviction, forfeit his licence, and be incapable of obtaining or holding any new one, and that over and above all other fines and penalties. ſ. 10. Selling ſmuggled goods.

And if any ſuch perſon be found trading as aforeſaid, without, or contrary to ſuch licence; or if on demand made by any juſtice of the peace, mayor, conſtable, or other peace officer of any town corporate or borough, where he ſhall ſo trade, or any officer of the cuſtoms or exciſe, ſhall not have his licence ready to be produced; *he ſhall* Trading without a licence, or refuſing to ſhew it.

forfeit 12l. (*a*) half to the informer, and half to the poor of the parish wherein the offender shall be discovered; (and by 29 *G.* 3. *c.* 26. *s.* 11. 10l. half to the king and half to the informer); and for non-payment thereof, shall suffer as a common vagrant, and be committed to the house of correction. 9 & 10 *W.* *c.* 27. *s.* 3. 3 & 4 *An.* *c.* 4. *s.* 4. 29 *G.* 3. *c.* 26. *s.* 11.

But by 35 *G.* 3. *c.* 91. the above penalty of 10l. inflicted by 29 *G.* 3. *c.* 26. *s.* 11. on persons trading without a licence or refusing to shew it, may be levied by distress and sale of the goods and chattels of such offender; or on the goods with which he shall be found trading, rendering him the overplus (if any) after deducting the charges of such distress and sale: And in the mean time such offender may be committed to the gaol or house of correction until such distress and sale are made as aforesaid, or until such penalty shall be otherwise paid or satisfied. *s.* 1.

Hawkers, &c. refusing to produce their licences may be detained.

And any person may seize and detain any hawker, pedlar, or other such trading person as aforesaid, found trading without a licence, or who shall refuse or neglect to produce the same after being required so to do, for a reasonable time, in order to give notice to a constable or other peace officer, who shall carry such person so seized (unless he in the mean time produce his licence) before a justice, who shall, on confession, or proof on oath by one witness of his having so traded, and no licence being produced by such offender before such justice, cause the said sum of 40l. to be levied by distress and sale of the goods, wares, or merchandize of such offender, or of the goods with which he is so found trading; and in the mean time, shall commit him to the gaol, or house of correction, there to remain until the said forfeiture and reasonable charges of taking the said distress, shall be levied by such distress and sale as aforesaid, or until the same shall be otherwise paid or satisfied. 29 *G.* 3. *c.* 26. *s.* 14.

Lending or borrowing licences.

If any person shall let out to hire or lend any licence to him granted, or shall trade with, or under colour of any licence granted to any other person, or in which his own name shall not be inserted, he shall forfeit 40l. And if any person shall be convicted of lending such licence, the same shall be forfeited and void, and he shall be utterly incapable of having any licence again granted. 29 *G.* 3. *c.* 26. *s.* 13.

(*a*) This seems to be a mistake, and should be 10l. only.

If any perſon ſhall forge or counterfeit, or travel with a forged or counterfeited licence; he ſhall forfeit 50l. and by 25 *G.* 3. *c.* 78. *ſ.* 5. 100l. half to the king and half to him that ſhall ſue in the courts at *Weſtminſter*, and ſhall alſo be liable to be puniſhed for forgery. 9 & 10 *W.* *c.* 27. *ſ.* 5. Counterfeiting licences.

But nothing herein ſhall prohibit any perſon from ſelling acts of parliament, forms of prayer, proclamations, gazettes, licenſed almanacks, or other printed papers licenſed by authority; or any fiſh, fruits, or victuals; nor to hinder any perſon who is the real worker or maker of any goods or wares, or his children, apprentices, ſervants, or agents, uſually reſiding with ſuch worker or maker, from carrying abroad, expoſing to ſale, or ſelling any of the ſaid goods and wares of his own making, in any public fair, market, or elſewhere; nor any tinker, cooper, glazier, plummer, harneſs mender, or other perſon uſually trading in mending kettles, tubs, houſhold goods, or harneſs, from going about and carrying with him proper materials for mending the ſame. 9 & 10 *W.* *c.* 27. *ſ.* 9. 29 *G.* 3. *c.* 26. *ſ.* 21. Exceptions.

Provided, that no perſon being a wholeſale trader in *Engliſh* bone lace, or in woollen, linen, ſilk, cotton, or mixed goods, or any goods, wares, or manufactures of *Great Britain*, and ſelling the ſame by *wholeſale*; ſhall be deemed a hawker, pedlar, or petty chapman; but that ſuch perſons, and thoſe that ſhall be immediately employed under them to ſell by wholeſale only, may go from houſe to houſe, to any cuſtomer who ſells again, without being ſubject to any penalty. 29 *G.* 3. *c.* 26. *ſ.* 20. Selling by wholeſale.

And any perſon who on the 1ſt day of *May* 1789, was duly licenſed to trade as a hawker and pedlar, may ſet up and exerciſe any trade or buſineſs, or ſet any other perſon to work, in any place where he ſhall be a reſident inhabitant, although neither he, nor ſuch perſon have been brought up in ſuch trade ſeven years as an apprentice, notwithſtanding any thing contained in an act of 5 *El.* to the contrary; and if any perſon ſhall be proſecuted for uſing ſuch trade in any city, town, or place, having been duly licenſed as aforeſaid, he may plead the general iſſue, and have double coſts. *ſ.* 19. May ſet up trades.

And ſuch perſons, their wives and children, during the time they ſhall exerciſe ſuch trade in any pariſh or place, ſhall not be removeable therefrom to their place of ſettlement, until they ſhall become *actually chargeable* to ſuch pariſh or place. *Id.* Are not removeable to their ſettlements.

forfeit 12l. (*a*) half to the informer, and half to the poor of the parish wherein the offender shall be discovered; (and by 29 *G.* 3. *c.* 26. *s.* 11. 10l. half to the king and half to the informer); and for non-payment thereof, shall suffer as a common vagrant, and be committed to the house of correction. 9 & 10 *W.* *c.* 27. *s.* 3. 3 & 4 *An.* *c.* 4. *s.* 4. 29 *G.* 3. *c.* 26. *s.* 11.

But by 35 *G.* 3. *c.* 91. the above penalty of 10l. inflicted by 29 *G.* 3. *c.* 26. *s.* 11. on persons trading without a licence or refusing to shew it, may be levied by distress and sale of the goods and chattels of such offender; or on the goods with which he shall be found trading, rendering him the overplus (if any) after deducting the charges of such distress and sale: And in the mean time such offender may be committed to the gaol or house of correction until such distress and sale are made as aforesaid, or until such penalty shall be otherwise paid or satisfied. *s.* 1.

Hawkers, &c. refusing to produce their licences may be detained.

And any person may seize and detain any hawker, pedlar, or other such trading person as aforesaid, found trading without a licence, or who shall refuse or neglect to produce the same after being required so to do, for a reasonable time, in order to give notice to a constable or other peace officer, who shall carry such person so seized (unless he in the mean time produce his licence) before a justice, who shall, on confession, or proof on oath by one witness of his having so traded, and no licence being produced by such offender before such justice, cause the said sum of 40l. to be levied by distress and sale of the goods, wares, or merchandize of such offender, or of the goods with which he is so found trading; and in the mean time, shall commit him to the gaol, or house of correction, there to remain until the said forfeiture and reasonable charges of taking the said distress, shall be levied by such distress and sale as aforesaid, or until the same shall be otherwise paid or satisfied. 29 *G.* 3. *c.* 26. *s.* 14.

Lending or borrowing licences.

If any person shall let out to hire or lend any licence to him granted, or shall trade with, or under colour of any licence granted to any other person, or in which his own name shall not be inserted, he shall forfeit 40l. And if any person shall be convicted of lending such licence, the same shall be forfeited and void, and he shall be utterly incapable of having any licence again granted. 29 *G.* 3. *c.* 26. *s.* 13.

(*a*) This seems to be a mistake, and should be 10l. only.

If any perſon ſhall forge or counterfeit, or travel with a forged or counterfeited licence; he ſhall forfeit 50l. and by 25 *G.* 3. *c.* 78. *ſ.* 5. 100l. half to the king and half to him that ſhall ſue in the courts at *Weſtminſter*, and ſhall alſo be liable to be puniſhed for forgery. 9 & 10 *W.* *c.* 27. *ſ.* 5. Counterfeiting licences.

But nothing herein ſhall prohibit any perſon from ſelling acts of parliament, forms of prayer, proclamations, gazettes, licenſed almanacks, or other printed papers licenſed by authority; or any fiſh, fruits, or victuals; nor to hinder any perſon who is the real worker or maker of any goods or wares, or his children, apprentices, ſervants, or agents, uſually reſiding with ſuch worker or maker, from carrying abroad, expoſing to ſale, or ſelling any of the ſaid goods and wares of his own making, in any public fair, market, or elſewhere; nor any tinker, cooper, glazier, plummer, harneſs mender, or other perſon uſually trading in mending kettles, tubs, houſhold goods, or harneſs, from going about and carrying with him proper materials for mending the ſame. 9 & 10 *W.* *c.* 27. *ſ.* 9. 29 *G.* 3. *c.* 26. *ſ.* 21. Exceptions.

Provided, that no perſon being a wholeſale trader in *Engliſh* bone lace, or in woollen, linen, ſilk, cotton, or mixed goods, or any goods, wares, or manufactures of *Great Britain*, and ſelling the ſame by *wholeſale*; ſhall be deemed a hawker, pedlar, or petty chapman; but that ſuch perſons, and thoſe that ſhall be immediately employed under them to ſell by wholeſale only, may go from houſe to houſe, to any cuſtomer who ſells again, without being ſubject to any penalty. 29 *G.* 3. *c.* 26. *ſ.* 20. Selling by wholeſale.

And any perſon who on the 1ſt day of *May* 1789, was duly licenſed to trade as a hawker and pedlar, may ſet up and exerciſe any trade or buſineſs, or ſet any other perſon to work, in any place where he ſhall be a reſident inhabitant, although neither he, nor ſuch perſon have been brought up in ſuch trade ſeven years as an apprentice, notwithſtanding any thing contained in an act of 5 *El.* to the contrary; and if any perſon ſhall be proſecuted for uſing ſuch trade in any city, town, or place, having been duly licenſed as aforeſaid, he may plead the general iſſue, and have double coſts. *ſ.* 19. May ſet up trades.

And ſuch perſons, their wives and children, during the time they ſhall exerciſe ſuch trade in any pariſh or place, ſhall not be removeable therefrom to their place of ſettlement, until they ſhall become *actually chargeable* to ſuch pariſh or place. *Id.* Are not removeable to their ſettlements.

Penalties how to be recovered.

All pecuniary penalties above 20l. ſhall be ſued for in the courts at *Weſtminſter:* If not exceeding 20l. may be recovered before any juſtice for the county, city, town, or place where the offence is committed, on proof thereof by confeſſion, or oath of one witneſs; and on non-payment, the ſame ſhall be levied by diſtreſs and ſale; and ſuch offender ſhall be committed to priſon until ſuch penalty and charges of taking ſuch diſtreſs be levied by ſuch diſtreſs and ſale, or until the ſame be paid and ſatisfied. And ſuch juſtice may by warrant cauſe ſuch offender to be brought before him, to anſwer to any charge or complaint for ſuch penalty, and may commit him to priſon as aforeſaid until the hearing thereof, unleſs he enter into recognizance with two ſureties, to appear at ſuch hearing. *ſ.* 22, 23.

Not to be impriſoned above three months.

Provided that no perſon committed to any gaol or houſe of correction for any offence againſt this act, ſhall be detained for any longer time than three months. *ſ.* 24.

Juſtices to receive penalties, &c.

And every juſtice before whom any perſon ſhall be convicted, ſhall receive his majeſty's ſhare of the penalty, and ſhall pay the ſame at the next ſeſſions to the clerk of the peace or other like officer, who ſhall forthwith remit the ſame without fee to the commiſſioners for licenſing hawkers, &c. or ſuch perſon as they ſhall appoint; and ſuch juſtice ſhall, on making ſuch payment, tranſmit a ſchedule to the ſaid commiſſioners, or perſon by them appointed, of the names of the perſons ſo convicted, the day on which they were convicted, their reſpective offences, and the ſums paid, arranged according to the ſeveral counties within which ſuch convictions were made. *ſ.* 28.

Appeal.

Provided always, that if any perſon ſhall think himſelf aggrieved by the judgment of ſuch juſtice, he may, on entering into recognizance with two ſureties to the amount of the penalty and coſts, to pay the ſame in caſe ſuch judgment be affirmed, appeal to the next ſeſſions for the county or place, who may finally hear and determine the ſame; or at their diſcretion, may ſtate the facts ſpecially for the determination of the king's bench thereon. And if the judgment of ſuch juſtice be affirmed, ſuch juſtices, or court of King's Bench, may award coſts as to them ſhall ſeem meet. *ſ.* 25.

Conviction.

And the conviction may be in the form or to the effect following:

Be it remembered, that on the —— day of ——— in the year of our Lord ——— at ——— in the county of ——— A. I. *came before me* I. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, reſiding near the place where the offence herinafter mentioned was committed, and informed me that* A. O. *of ——— in the county of ——* (here ſet forth the offence) *whereupon the ſaid* A. O. *being duly ſummoned to anſwer the ſaid charge appeared before me, and having heard the charge contained in the ſaid information, acknowledged and voluntarily confeſſed the facts therein ſtated to be true, but in his defence alleged* (here ſet forth the ſubſtance of the defence); *or voluntarily confeſſed the ſaid charge to be true, or did not make any defence againſt the ſaid charge, whereupon the ſame was fully proved on the oath of* A. W. *a credible witneſs; or ſaid that he was not guilty of the ſaid offence, whereupon the ſame was fully proved on the oath of* A. W. *a credible witneſs,* [or as the caſe may be,] *or did not appear before me in purſuance of the ſaid ſummons, but the ſaid charge was fully proved on the oath of* A. W. *a credible witneſs* (or as the caſe may be); *and therefore it manifeſtly appearing to me that the ſaid* A. O. *is guilty of the offence charged in the ſaid information, I do hereby convict him of the ſaid offence, and do adjudge that he hath forfeited the ſum of ——— (or his licence and the ſum of ———) of lawful money of* Great Britain, *to be diſtributed as the law directs, according to the form of the ſtatute in ſuch caſe made and provided. Given, &c.*

And no conviction upon this act ſhall be removed into any other court, ſave upon appeal as aforeſaid. *ſ.* 26, 27.

Conſtables to be aſſiſting.

And if any conſtable or other peace officer ſhall refuſe and neglect, upon due notice, or on his own view, to be aiding and aſſiſting in the execution hereof, being thereunto required; and ſhall be thereof convicted, on confeſſion, or on the oath of one witneſs, before one juſtice where the offence ſhall be committed, he ſhall forfeit 10l. to be recovered and applied as aforeſaid. *ſ.* 15.

Witneſſes not appearing, or refuſing to be ſworn.

Witneſſes not appearing having been duly ſummoned, without reaſonable cauſe to be allowed by ſuch juſtices, or refuſing to be examined upon oath; ſhall forfeit 10l. *ſ.* 30.

Application of penalties.

All penalties by this act impoſed, ſhall be diſtributed half to the king and half to him that ſhall ſue. *ſ.* 22, 23.

And

And all powers contained in the 9 & 10 *W.* *c.* 27. relating to the duties granted by that act, ſhall be applied in the execution of this act. *ſ.* 29.

Hawks and Hawking. See Game.

Hay.

THE 2 *W.* *ſeſſ.* 2. *c.* 8. and 8 & 9 *W.* *c.* 17. and 31 *G.* 2. *c.* 40. containing regulations concerning the ſelling of hay, ſtraw, and cattle, within the bills of mortality, are by 36 *G.* 3. *c.* 88. repealed, ſo far as relates to hay and ſtraw, but are not general enough to be here inſerted at large.

Hedge breaking. See Wood.

Hemp.

Watering hemp or flax.

BY the 33 *H.* 8. *c.* 17. It ſhall not be lawful to any perſon to water any hemp or flax, in any river, running water, ſtream, brook, or other common pond, where beaſts uſed to be watered; on pain that every perſon offending ſhall forfeit 20s. half to the king, and half to the party grieved, or any other who ſhall ſue in any court of record, leet, or law day.

Bounty for the encouragment of the growth of hemp and flax.

By 26 *G.* 3. *c.* 43. For the encouragement of the growth of hemp and flax in *England*, there ſhall be applied in bounties yearly a ſum not exceeding (6335l. 15s. 27 *G.* 3. *c.* 13. *ſ.* 65.) at the rate of 3d. *per* ſtone of hemp, and 4d. *per* ſtone of flax, to be raiſed in the year 1787, (*a*) and for every ſubſequent year, to be paid to the grower, or other perſon who breaks or properly prepares the ſame for market. 26 *G.* 3. *c.* 43. *ſ.* 3.

(*a*) This act is in force for 7 years from 25th *March* 1787, and from thence to the end of the next ſeſſion of parliament.

And

And the perſon entitled to ſuch bounty, ſhall ſign and exhibit his claim to one juſtice of the county where the hemp or flax has been raiſed, mentioning of what crop the ſame is, and the ground on which it grew, which claim ſhall likewiſe be atteſted by two pariſh officers, who ſhall certify, that they believe the truth of the particulars contained in ſuch claim, and when ſo atteſted, ſuch juſtice ſhall counterſign and tranſmit the ſame to the clerk of the peace, to be by him laid before the next ſeſſions. *ſ.* 4.

And every perſon who ſhall receive any of the bounties, ſhall enter into bond or ſecurity to the clerk of the peace, with 2 ſureties to be approved at the ſeſſions, in treble the amount of the bounty, with condition that ſuch perſon is duly entitled to the bounty, according to this act; which bond ſhall be put in ſuit by the clerk of the peace, and all money recovered ſhall be put into the hands of the county, and applied in the firſt place towards defraying the expences of ſuch proſecution and the execution of this act; and the remainder towards the fund out of which the bounties are to be granted. *ſ.* 5.

And the juſtices at every ſeſſions, ſhall adverriſe and publiſh the bounties by this act granted, and the conditions neceſſary to be complied with before the ſame can be received, with directions for all perſons claiming the bounties to deliver in their claims in the manner preſcribed. *ſ.* 6.

And the juſtices ſhall at their *Midſummer* ſeſſions yearly, publiſh the names and places of abode of perſons claiming, and the quantities of hemp and flax for which the bounties are claimed, and ſhall direct inquiries to be made, and the methods to be purſued for diſcovering the truth of ſuch claims, and ſhall at their next *Michaelmas* ſeſſions finally determine and publiſh the ſame as aforeſaid; and ſhall then make up a ſtate thereof, and of their judgments thereon, and tranſmit a certificate thereof to the treaſury praying an iſſue of the amount of the bounties, and the treaſury ſhall order the receiver general of the land tax, to pay on the order of the ſeſſions without fee, the ſum appropriated for each county; and the juſtices ſhall forthwith pay, without fee, the ſame to the perſons entitled thereto. *ſ.* 7.

And the perſons preparing hemp or flax for market, and who ſhall ſell any quantity within *England*, ſhall deliver to the buyer, a particular account of the hemp and flax ſold, expreſſing the quantity, place where it grew, and the year of its growth; and the ſeller in like manner ſhall take of the buyer, a receipt in writing containing a duplicate thereof. *ſ.* 8.

And

And ſuch reaſonable allowance ſhall be made to the clerks of the peace for their trouble, as the ſeſſions ſhall direct. *ſ.* 10.

Bounty on importation.

The act of 4 *G.* 3. *c* 26. granting a bounty on importation of hemp and rough and undreſſed flax, from his majeſty's colonies in *America*, is revived and continued until *June* 24, 1806, by 26 *G.* 3. *c.* 53. *ſ.* 12.

Herring Fiſhery. See Fiſheries.
Hides and ſkins. See Leather.
High conſtable. See Conſtable.
High treaſon. See Treaſon.

Highways in general.

NOTE; Bridges repaired by the pariſh or townſhip, and which conſequently come under the cognizance of the ſurveyor of the highways, are comprehended under this title: County bridges are treated of under title Bridges.

For the ordering of ſtreets in cities and market towns, ſee title Scavengers.

I. Concerning the highways in general.

II. Concerning turnpike roads in particular.

I. Concerning the highways in general.

I. What is a highway.
II. Of the ſpecial ſeſſions to be held for the highways.
III. Appointment of ſurveyors.
IV. Who are liable to repair, and in what proportion.

V. Com-

V. *Compoſition inſtead of labour.*
VI. *Working.*
VII. *Materials how to be procured.*
VIII. *Removing obſtructions and annoyances.*
IX. *Direction poſts, blocks, mile ſtones, water-marks, and battlements of bridges.*
X. *Breadth of wheels, and number of horſes.*
XI. *Breadth, widening, changing, and diverting of highways.*
XII. *Aſſeſſments, how to be made.*
XIII. *Penalty of hindring the execution.*
XIV. *Penalty of the ſurveyor for neglect of duty.*
XV. *Surveyor's account.*
XVI. *Preſentment or indictment of highways in general.*
XVII. *Preſentment by a juſtice.*
XVIII. *Levying of aſſeſſments, fines, and forfeitures.*
XIX. *Appeal.*
XX. *Limitation of actions.*

I. What is a highway.

There are three kinds of ways; (1.) A footway; (2.) A foot and horſe way, which is alſo a pack or drift way; (3.) A foot, horſe, and cart way. 1 *Inſt.* 56. Three kinds of highways.

It ſeemeth that any one of the ſaid ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is alſo a thoroughfare to other towns, may properly be called a highway. 1 *Haw.* 201. Difference between a highway and a private way.

For there were highways before there were market towns. And if it were eſſential to the conſtituting of a highway, that it ſhould expreſsly lead from market town to market town; then it would follow, that the lord of a market, by forfeiting or ſurrendering his charter, might cauſe that to ceaſe to be a highway, which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby conſequentially change the way to it from a private way into a highway.

And therefore, the diſtinction which is taken in ſome books, concerning this matter, ſeems to be very reaſonable; that every way from town to town may be called a highway, becauſe it is common to all the king's ſubjects; and

and consequently that a nusance therein is a common nusance, and punishable by indictment; but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of which, as it seems, may have an action on the case for a nusance therein. 1 *Haw.* 201.

Nusance in, and repairs of, private ways.

So if I have a private way without a gate, and a gate is hung up, an action lies upon the case, for I have not my way as I had before. *Litt. R.* 267.

So if one grants me a way, and afterwards digs trenches in it to my hindrance, I may fill them up again. *Godb.* 53.

But if a way which a man has, becomes not passable, or becomes very bad, by the owner of the land tearing it up with his carts, and so the same be filled with water, yet he who has the way cannot dig the ground to let out the water, for he has no interest in the soil. *Godb.* 52. But in such case, he may bring his action against the owner of the land for spoiling the way, or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

Private ways to be repaired by those who use them.

But where a private way is spoiled by those who have a right to pass thereon, and not through the default of the owner of the land; it seemeth that they who have the use and benefit of the way ought to repair it, and not the owner of the soil, unless he is bound thereto by custom or special agreement.

In the case of *Rider* v. *Smith*, *T.* 30 *G.* 3. It was determined, that in an action on the case for not repairing a private way leading through the defendant's close, it is sufficient to allege, that the defendant, *by reason of his possession of the said close, called, &c. and two closes of land with the appurtenances, contiguous and next adjoining thereto*, is bound to repair the said way. *Durnf.* and *East*, 3 V. 766.

T. 21 *G.* 3. *Taylor* v. *Whitehead.* This was an action of trespass for breaking and entering the plaintiff's close. The defendant (*inter alia*) pleaded a right of way by prescription, through a lane of the plaintiff's, contiguous to the place in question, to *Otley-bridge* on the river *Wharfe* in *Yorkshire*, and *that the tenants and occupiers of those lands were from time whereof, &c. by reason of their tenure, bound*

bound to repair the lane, and the banks thereof next to the river: That at ſeveral times the lane was out of repair and overflowed with water, ſo that the defendant could not uſe the way without imminent danger of the loſs of his life and goods; and that he neceſſarily went over the lands adjoining as near to his ſaid way as he poſſibly could, as it was lawful for him to do, &c.——This cauſe was tried before L. *Loughborough* at *York* in 1780, and afterwards argued in the court of king's bench.——By L. *Mansfield* Ch. J. This queſtion is upon the grant of this way. Now it is not laid to be a grant of a way generally over the land; but of a preciſe ſpecific way. The grantor ſays, you may go in this particular line, but I do not give you a right to go either on the right or left. I entirely agree with my brother *Walker*, that by common law, "he who hath the uſe of a thing ought to repair it." The grantor *may* bind himſelf, but here he has not done it. He has not undertaken to provide againſt the overflowing of the river; and, for ought that appears, *that* may have happened by the neglect of the defendant.

Otherwiſe as to highways.

Highways are governed by a different principle. They are for the public ſervice, and if the uſual tract is impaſſable, it is for the general good that people ſhould be entitled to paſs in another line. And that this was clear law eſtabliſhed by a number of caſes, particularly that of *Abſor* v. *French* (*), and *Hera*'s caſe (†), that where a common highway is out of repair by the overflowing of a river, or any other cauſe, paſſengers have a right to go upon the adjacent ground. So if the water impairs the banks of a navigable river, (which is indeed conſidered as a highway,) it is juſtifiable to go upon the neareſt part of the field next adjoining (‡). *Doug.* 716.

Where commiſſioners, under a particular act for incloſing a common, have power to direct the repair of roads, ſuch power does not extend to perſons not intereſted in the incloſure.

In the caſe of *K.* v. *Cottingham*, *M.* 35 *G.* 3. This was an indictment againſt the inhabitants of *Cottingham*, for not repairing a road. By 6 *G.* 3. *c.* 78. for incloſing certain common lands, the commiſſioners were empowered to ſet out both publick and private roads, which *publick* roads ſhould be repaired in like manner as other publick roads, and all *private* ways, *&c* ſhould be repaired by ſuch perſon or perſons and in *ſuch manner* as the commiſſioners in their award ſhould direct. The

(*) *B. R. M.* 30 *Car.* 2. 2 *Show.* 28. *S. C. Lev.* 234.
(†) 8 *Caſ.* Sir *W. Jones*, 296.
(‡) 1 L. *Raym.* 725.

commiſſioners

commiſſioners here directed that all roads, whether publick or private, ſhould be repaired in like manner as other publick highways are repaired by the laws of this realm. ——L. *Kenyon* Ch. J. (*inter alia*) ſaid, That this act empowers the commiſſioners to ſet out all the roads; adding, that the publick roads ſhould be repaired as other publick roads, and that the private roads ſhould be repaired by *ſuch perſon and perſons*, and in ſuch manner as the commiſſioners ſhould direct. The queſtion is, Whether the words *perſon and perſons* ſhall extend to ſtrangers that the commiſſioners ſhould name, or whether they muſt be confined to *ſuch perſons as are intereſted in the incloſure?* Common ſenſe requires that the latter conſtruction ſhould be adopted, and that the commiſſioners in this reſpect have exceeded their authority. *Durnf.* and *Eaſt*, 6 V. 20.

How far outlets are part of the highway.

It hath been holden, that if there be an highway in an open field, and the people have uſed time out of mind, when the ways are bad, to go by outlets on the land adjoining, ſuch outlets are parcel of the way; for the king's ſubjects ought to have a good paſſage, and the good paſſage is the way and not only the beaten track; from whence it follows, that if ſuch outlets be ſown with corn, and the beaten track be foundrous, the king's ſubjects may juſtify going upon the corn. 1 *Haw.* 201.

How far a river may be an highway.

In books of the beſt authority, a river common to all men is called an highway. 1 *Haw.* 201.

To whom the freehold of an highway belongeth.

The freehold of the highway is in him that hath the freehold of the ſoil; but the free paſſage is for all the king's liege people. 2 *Inſt.* 705.

But the king has nothing but the paſſage for himſelf and his people, for the freehold, and all profits belong to the owner of the ſoil; and all the trees upon it, and mines under it, which may be extremely valuable. 1 *Burr.* 143.

H. 8 *G.* 2. Sir *John Lade* againſt *Shepherd.* Upon trial of an action of treſpaſs, a caſe was made, that the place where the ſuppoſed treſpaſs was committed, was formerly the property of the plaintiff, who ſome years ſince built a ſtreet upon it, which has ever ſince been uſed as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof reſted on the highway. And it was inſiſted for the defendant, that by the plaintiff's making it a ſtreet, it was a dedication of it to the publick; and therefore however he might be liable to an indictment for a nuſance, yet the plaintiff could not ſue him as for a treſ-

paſs on his private property.—But by the court: It is certainly a dedication to the publick, ſo far as the publick has occaſion for it, which is only for a right of paſſage: But it never was underſtood to be a transfer of the abſolute property in the ſoil. So the plaintiff had judgment. *Str.* 1004.

In a caſe, *M.* 13 *G.* 3. concerning the right to the ſoil in a highway, L. *Mansfield* ſaid, that where no perſon claims the property of the lands on either ſide of the highway, the preſumption is in favour of the lord of the manor: But if the highway goes through the property of others, the preſumption is in favour of the owners of the land on each ſide. But in either caſe, the preſumption only ſtands, till the contrary be proved. *Lofft.* 358.

II. Of the ſpecial ſeſſions to be held for the highways.

The juſtices ſhall hold a ſpecial ſeſſions for the highways, in the week next after the *Michaelmas* general quarter ſeſſions yearly. 13 *G.* 3. *c.* 78. *ſ.* 1.

And any two juſtices, within their reſpective limits, may, whenever they ſhall judge proper, hold a ſpecial ſeſſions, and adjourn the ſame as they ſhall think fit; cauſing notice to be given of the time and place of holding ſuch ſpecial ſeſſions, and of the adjournments thereof, to the ſeveral juſtices acting and reſiding within ſuch limits, by the high conſtable or other proper officer. *ſ.* 61.

III. Appointment of ſurveyors.

Notice of the time and place of appointment.

The juſtices ſhall hold ſuch *Michaelmas* ſpecial ſeſſions as aforeſaid, at ſuch convenient place within their reſpective limits, as they in their diſcretion ſhall judge proper:

And ſhall give notice (A) of the time and place to the conſtables of the reſpective pariſhes, townſhips, or places, at leaſt ten days before the holding of the ſaid ſeſſions. 13 *G.* 3. *c.* 78. *ſ.* 1.

Liſts to be made.

On *Sept.* 22, yearly, unleſs that day be *Sunday*, and then on the day following, the conſtables, churchwardens, ſurveyors of the highways, and houſeholders aſſeſſed to any parochial or public rate, ſhall aſſemble at the church or chapel, or if there be no church or chapel, then at the uſual place of public meetings, at the hour of eleven in the forenoon: And the major part of them ſo aſ-

ſembled ſhall make a liſt of the names of at leaſt ten perſons living within ſuch diſtrict, each of whom hath an eſtate, in lands, tenements, or hereditaments, lying within ſuch diſtrict, in his own right or in the right of his wife, of the value of 10l. by the year,—or a perſonal eſtate of the value of 100l.—or occupier of a tenement of the yearly value of 30l. And if there ſhall not be ten perſons ſo qualified, they ſhall inſert in ſuch liſt the names of ſo many as are ſo qualified, together with the names of ſo many of the moſt ſufficient and able inhabitants not ſo qualified as ſhall make up the number ten, if ſo many can be found; if not, ſo many as ſhall be there reſident—to ſerve the office of ſurveyor of the highways. 13 *G.* 3. *c.* 78. *ſ.* 1.

Duplicate to be tranſmitted to a juſtice.

And the conſtable ſhall, within 3 days after ſuch meeting, tranſmit a duplicate (B) of ſuch liſt to one of the juſtices living near to ſuch pariſh or place. *Id.*

Notice to the perſons in the liſt.

And ſhall alſo, within 3 days after making the ſaid liſt, give perſonal notice to, or cauſe notice in writing (C) to be left at the place of abode of the ſeveral perſons contained in ſuch liſt, informing them of their being ſo named; to the intent that they may ſeverally appear before the juſtices at the ſaid ſpecial ſeſſions, to accept ſuch office, if they ſhall be appointed thereto, or to ſhew cauſe, if they have any, againſt their being ſo appointed. *Id.*

Liſt returned to the ſpecial ſeſſions.

And ſhall alſo return and deliver the original liſt (B) to the juſtices at their ſaid ſpecial ſeſſions to be holden in the week next after the *Michaelmas* general quarter ſeſſions. *Id.*

Appointment and charge.

And the juſtices then and there, from the ſaid liſts, according to their diſcretion, and the largeneſs of the pariſh, townſhip, or place, ſhall, by warrant under their hands and ſeals, appoint (D) one, two, or more of ſuch perſons as aforeſaid, if he or they ſhall in the opinion of ſuch juſtices be qualified for the office; if not, one two, or more of the other ſubſtantial inhabitants, or occupiers of lands, tenements, woods, tithes, or other hereditaments, within ſuch pariſh, townſhip, or place, living within 3 miles thereof and within the ſame county, fit and proper to ſerve the office, if any ſuch can be found. *Id.*

In the caſe of *K.* v. *Baldwin* and others, *H.* 37 *G.* 3. A rule was moved for to ſhew cauſe why a *mandamus* ſhould not iſſue to the defendant and other juſtices of *Surrey*, commanding them to appoint one or more perſons *named in the liſt* of 21 perſons returned to them as directed by 13 *G.* 3. *c.* 78. (above) to be ſurveyors of the highways for the pariſh of *Batterſea*.———L. *Kenyon* Ch. J. By the firſt ſection in the act of parliament, if the

the liſt of perſons returned to the juſtices does not contain the names of perſons whom the juſtices think qualified, they may appoint any other perſons of the pariſh who are properly qualified. If indeed the magiſtrates act corruptly they may be puniſhed for an abuſe of their diſcretionary power; but no corruption is even ſuggeſted in this caſe. The liſts are directed by the act only for the purpoſe of aſſiſting the magiſtrates, who in many inſtances might not perhaps know a ſufficient number of perſons fit for the office. Rule diſcharged. *Durnf.* and *Eaſt*, 7 V. 169.

Which appointment ſhall by the conſtable be notified to every perſon ſo appointed, within 3 days after ſuch appointment, by ſerving him with the ſaid warrant, or by leaving the ſame or a true copy thereof at his houſe or uſual place of abode. *Id.*

And every perſon ſo appointed, if he accepts the ſaid office, ſhall be ſurveyor of the highways for the year enſuing, and ſhall take upon him and duly execute the ſaid office. *Id.*

Provided, that no perſon who hath been appointed and ſerved the office for one year, ſhall be liable to be appointed again for the ſame pariſh or place within 3 years from the time of ſuch firſt appointment and ſervice, unleſs he ſhall conſent thereto. *Id.*

And the ſaid juſtices ſhall then and there give ſuch of the ſaid ſurveyors as ſhall perſonally appear before them a charge, for the better performance of their duty. *Id.*

Penalty on refuſal to ſerve, and others appointed with ſalaries.

If any of the perſons ſo appointed, whoſe names were contained in the liſt, and who were ſerved with the ſaid notice, ſhall refuſe or neglect to appear at the ſaid ſpecial ſeſſions and accept the ſaid office if appointed thereto in manner aforeſaid; or ſhall not, within 6 days after being ſerved with ſuch warrant of appointment, ſignify his acceptance thereof, either in perſon or by writing, to one of the ſaid juſtices, he ſhall forfeit 5l. And if any perſon ſo appointed, whoſe name was not contained in the liſt, ſhall refuſe or neglect to accept the ſaid office, or ſhall not, within 6 days after being ſerved with the appointment, ſhew to one of the juſtices ſigning ſuch appointment ſufficient cauſe why he ſhould not ſerve ſuch office, he ſhall forfeit 50s. *Id.*

But if no ſuch liſt ſhall be made and returned, or if the juſtices ſhall make an appointment, and the perſon appointed ſhall refuſe to ſerve, the ſaid juſtices or any two of them ſhall, at the ſaid ſpecial ſeſſions, or at ſome

ſubſequent ſeſſions to be holden within one month after, nominate and appoint ſome other perſon whom they ſhall judge proper, and appoint him a ſalary out of the ſaid forfeitures and all other forfeitures, fines, penalties, aſſeſſments, and compoſitions within ſuch diſtrict as they ſhall think fit, not exceeding one eight part of what ſhall have been raiſed by an aſſeſſment of 6d. in the pound for the uſe of the highways in ſuch diſtrict where any ſuch aſſeſſment hath been raiſed; and obſerving the ſame reſtriction as near as they can, from the beſt information they ſhall be able to get of the probable amount of ſuch aſſeſſment, where none hath been already made: And the ſaid juſtices may, if they think fit, require the conſtables and ſurveyor, or any of them, to return to the ſaid juſtices, at ſuch time and place as they ſhall appoint, an account in writing of ſuch ſum which ſuch aſſeſſment of 6d. in the pound hath raiſed, or will in his opinion raiſe within ſuch pariſh or place. *Durnf.* and *Eaſt*, 7 V. 169.

And if the conſtables, churchwardens, ſurveyors, and ſuch houſeholders as aforeſaid ſhall neglect or refuſe to make ſuch liſt, or if the conſtable ſhall not return ſuch liſt when made, and ſuch duplicate thereof as aforeſaid, and give ſuch notice or notices, and ſerve ſuch warrant as in this act is directed, or if ſuch conſtable or ſurveyor ſhall neglect to return ſuch account of the amount of ſuch aſſeſſment as aforeſaid, when required, he ſhall forfeit 40s. *Id.*

Provided, that in cities, boroughs, and towns corporate, the juſtices ſhall not allow any ſalary, other than ſuch as ſhall be agreed on by two parts out of three of the perſons aſſembled in the reſpective pariſh, townſhip, or place, within ſuch city, borough, or town corporate. *Id. ſ.* 53, 54.

And in all caſes where the juſtices, upon neglect or refuſal of the perſon ſo appointed ſurveyor to accept the ſaid office, ſhall appoint any other with a ſalary; they ſhall appoint one ſubſtantial inhabitant of ſuch pariſh, townſhip, or place, for *aſſiſtant* (E) to ſuch ſurveyor, until the next annual appointment of ſurveyors: And if the perſon ſo appointed aſſiſtant ſhall, on notice of ſuch appointment, refuſe to accept the office, he ſhall forfeit 50s. And in that caſe they ſhall appoint any other ſubſtantial inhabitant for aſſiſtant to ſuch ſurveyor as aforeſaid: and if ſuch ſecond appointed aſſiſtant ſhall refuſe to accept that office, he ſhall in like manner forfeit 50s.

And

And in ſuch caſe they may appoint a third perſon in like manner to be aſſiſtant to ſuch ſurveyor, who ſhall be entitled to theſe laſt-mentioned forfeitures, and alſo to ſuch further allowance by way of ſalary as the ſaid juſtices ſhall think proper: to be paid as the ſurveyor's ſalary is hereby directed to be paid. Provided that no perſon ſo appointed aſſiſtant for one year, ſhall be liable to be appointed aſſiſtant again for the ſame pariſh, townſhip, or place, within 3 years next following ſuch appointment, without his conſent. *ſ.* 2.

And the ſurveyor of any pariſh, townſhip, or place, who ſhall not reſide therein, but ſhall be appointed with ſuch ſalary as aforeſaid, ſhall (if required) give bond, upon paper without ſtamp, (for which the juſtice's clerks ſhall have 6d. and no more,) to account for the money that ſhall come to his hands as ſurveyor. *ſ.* 3. 48.

The ſaid aſſiſtant ſhall on requeſt aſſiſt the ſurveyor in calling in and attending the performance of the ſtatute duty; in collecting the compoſitions, fines, and forfeitures; in collecting the aſſeſſments; in making out and ſerving notices; and in ſuch other matters as ſhall be reaſonably required of him by the ſurveyor in the execution of his office: And ſhall account to the ſurveyor for the money that ſhall come to his hands, on pain of forfeiting double. And if he ſhall make default in the performance of any of the duty required of him, he ſhall forfeit not exceeding 5l. nor leſs than 40s. *ſ.* 4.

Abſtract of the act to be delivered to the ſurveyors.

The juſtices ſhall at every ſpecial ſeſſions to be held in the week next after the *Michaelmas* quarter ſeſſions, cauſe to be delivered a printed abſtract of the moſt material parts of this act, to every ſurveyor to be then appointed by them, as the charge hereby directed to be given. *ſ.* 70.

Fee for the appointment and charge.

And the ſurveyor ſhall pay to the juſtices' clerks for the appointment and charge the ſum of one ſhilling. *ſ.* 48. 70.

Appointment of ſpecial ſurveyors.

If two parts out of three of thoſe ſo to be aſſembled for the nomination of ſurveyors, ſhall agree in the choice of any particular perſon of ſkill and experience to ſerve the office of ſurveyor, and in ſettling a certain ſalary for his trouble therein, and ſhall return the name of ſuch perſon (B) together with the liſt, to the juſtices at their ſaid ſeſſions to be holden in the week next after the *Michaelmas* quarter ſeſſions; the ſaid juſtices may, if they think proper, appoint ſuch perſon to be ſurveyor for ſuch pariſh, townſhip, or place, and allow him the ſalary mentioned in ſuch

agreement; which ſhall be raiſed and paid in the ſame manner as the ſalary herein-before mentioned is directed to be raiſed and paid. *ſ.* 5.

Surveyor dying.

If a ſurveyor ſhall die, or become incapable to execute his office, before the next ſpecial ſeſſions for appointing ſurveyors; two juſtices, at a ſpecial ſeſſions, may appoint another whom they ſhall think proper, until the next ſpecial ſeſſions for appointing ſurveyors as aforeſaid. And if ſuch deceaſed ſurveyor had a ſalary, they may allow the ſame ſalary to his ſucceſſor, in proportion to the time he ſhall ſerve the ſaid office. *ſ.* 5.

IV. Who are liable to repair, and in what proportion.

Pariſh in general to repair.

It ſeems to be agreed, that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the pariſh wherein they are: But there is no doubt but particular perſons may be burdened with the general charge of repairing a highway, in two caſes; namely, in reſpect of an incloſure, or by preſcription.

Highway lying in two pariſhes, two juſtices to determine what parts ſhall be repaired by each.

By 34 *G.* 3. *c.* 64. After reciting, That it frequently happens that the boundaries of pariſhes paſs through the middle of a common highway, and one ſide of ſuch highway is ſituate in one pariſh, and the other ſide in another pariſh, whereby great inconveniences often ariſe in repairing the ſame: It is enacted, that two juſtices, on complaint (F) of any ſurveyor of any pariſh, (ſtating in writing and by a plan thereunto annexed, that there is ſuch a highway, one ſide whereof ought to be repaired by one pariſh, and the other ſide by another, and particularly deſcribing the ſame by metes, bounds, and admeaſurement thereof,) may iſſue their ſummons (G), with a copy of ſuch writing and plan, to the ſurveyor of ſuch other pariſh, to appear before them at ſome time not more than 14 nor leſs than 7 days from the day of the date of ſuch ſummons; and if the parties appear, ſuch juſtices may then proceed finally to decide the matter in manner hereafter mentioned, in caſe all the parties ſhall conſent thereto; but in caſe the ſurveyor ſummoned ſhall not appear on ſuch firſt ſummons, or appearing, ſhall require further time, ſuch juſtices ſhall adjourn the further conſideration of the matter for any further time, not more than 21 nor leſs than 14 days from the day of ſuch adjournment, of which the ſurveyor not appearing ſhall have notice; on which day the ſaid juſtices ſhall proceed to hear the parties

and

and their witneſſes, and whether the party ſummoned appear or not, ſhall proceed to examine and finally determine the matter in form following; (viz.) They ſhall divide the whole of ſuch highway by a tranſverſe line croſſing the ſame into two equal parts, or into two ſuch unequal parts and proportions as, in conſideration of the ſoil, waters, floods, the inequality of ſuch highway, or any other circumſtances attending the ſame, they in their diſcretion ſhall think juſt and right; and to declare, adjudge, and order (H) that the whole of ſuch highway on both ſides thereof, in one of ſuch parts, ſhall be repaired by one of ſuch pariſhes, and that the whole thereof on both ſides of the other part, ſhall be repaired by the other of ſuch pariſhes; and ſhall cauſe ſuch their order, and a plan of ſuch highway, and the allotment thereof as before mentioned, to be fairly delineated on paper or parchment, and filed with the clerk of the peace; and ſhall alſo cauſe ſuch poſts, ſtones, or other boundaries to be ſet up as they ſhall think neceſſary for aſcertaining ſuch diviſion as aforeſaid. *ſ.* 1.

Each pariſh afterwards bound to repair the parts ſo allotted.

And after ſuch order and plan ſhall be ſo filed with the clerk of the peace as aforeſaid, ſuch pariſhes ſhall be bound as of common right to repair ſuch parts of ſuch highway ſo allotted to them as aforeſaid, and ſhall be liable to be proſecuted and indicted for neglect of ſuch duty, and ſhall in all reſpects whatſoever be liable and ſubject to all the proviſions, regulations, and penalties contained in any act of parliament for repairing highways, in like manner as they are liable to repair any other highway within ſuch pariſh; and alſo ſhall be diſcharged from the repair of ſuch other parts of the highway as ſhall not be included in their reſpective allotments. *ſ.* 2.

Coſts of the proceedings.

And all coſts, charges, and expences incurred, ſhall be defrayed by ſuch two pariſhes, to be aſcertained by ſuch two juſtices; and if not paid, either by ſuch juſtices, or any other juſtice, may levy the ſame by diſtreſs, with the coſts of ſuch diſtreſs, on the goods and chattels of any ſurveyor of the highways of ſuch pariſh. *ſ.* 3.

Not to alter the boundaries of counties, &c.

Provided, that nothing herein ſhall affect, change, or alter in any manner whatſoever, any boundaries of counties, lordſhips, manors, or any other diviſion of publick or private property, nor the boundaries of any pariſh, otherwiſe than for the purpoſe of repairing ſuch highways as aforeſaid. *ſ.* 4.

Not to relate to highways repaired by bodies politick, tenure, &c. without conſent.

But nothing herein ſhall relate to highways repairable by bodies politick or corporate, townſhips, or other ſuch places, or private perſons, by reaſon of tenure of lands, or

otherwiſe howſoever, but ſhall be conſtrued to relate to ſuch highways the repair of which belongs to pariſhes only; unleſs ſuch perſons be deſirous that the ſame ſhall be placed under the regulations of this act; in which caſe ſuch two juſtices may proceed therein in like manner as is herein directed with reſpect to pariſhes. *ſ.* 5.

Appeal.

Provided, that either of the two pariſhes, by an order in veſtry ſpecially called for that purpoſe, may appeal to the next quarter ſeſſions after ſuch order is filed as aforeſaid, who may make ſuch order as ſhall appear to them to be juſt, either by affirming, quaſhing, or amending the order of the two juſtices; and ſhall allow coſts to either party as they ſhall think right: which order of ſeſſions ſhall not be removed by *certiorari* or otherwiſe, but ſhall be final to all intents and purpoſes whatſoever. *ſ.* 7.

Repairing in reſpect of an incloſure.

A man may be bound to the repair of a highway, in reſpect of an incloſure of the land wherein it lies; as where the owner of lands not incloſed, next adjoining to the highway, incloſeth his lands on both ſides thereof; in which caſe, he is bound to make a perfect good way, and ſhall not be excuſed for making it as good as it was at the time of the incloſure, if it were then any way defective; becauſe, before the incloſure, the people uſed, when the way was bad, to go, for their better paſſage, over the fields adjoining out of the common track, which liberty is taken away by the incloſure. 1 *Haw.* 202.

And if the way is not ſufficient, any paſſenger may break down the incloſure, and go over the land, and juſtify it, till a ſufficient way is made. 3 *Salk.* 182.

Alſo it hath been holden, if one incloſe land on one ſide, which hath been anciently incloſed of the other ſide, he ought to repair all the way; but if there be not ſuch an ancient incloſure of the other ſide, he ought to repair but half that way. 1 *Haw.* 202.

Therefore if there be an old hedge time out of mind on one ſide of the way, and a perſon having land on the other ſide makes a new hedge, ſuch perſon ſhall be charged with the whole repair. 1 *Sid.* 464.

But if one perſon makes an hedge on one ſide of the way, and another perſon makes an hedge on the other ſide of the way, they ſhall be chargeable to the repair thereof by moieties. *Id.*

But it is ſaid, that wherever one is bound to repair a highway, or part thereof, in reſpect of an incloſure, and lays it open again as it was before, he ſhall be freed from the charge of ſuch repair. 1 *Haw.* 202.

A par-

A particular perſon may be bound to repair a highway, in reſpect of a preſcription; and it is ſaid, that a corporation aggregate may be compelled to do it, by force of a general preſcription, that it ought and hath uſed to do it, without ſhewing that it uſed to do ſo in reſpect of the tenure of certain lands, or for any other conſideration; becauſe ſuch a corporation in judgment of law never dies, and therefore if it were ever bound to ſuch a duty, it muſt needs continue to be always ſo; neither is it any plea, that ſuch a corporation hath always done it out of charity, for what it hath always done, it ſhall be preſumed to have been always bound to do: But it is ſaid, that a perſon cannot be charged with ſuch a duty, by a general preſcription from what his anceſtors have done, unleſs it be for ſome ſpecial reaſon, as the having land deſcended from ſuch anceſtors, which are holden by ſuch like ſervice. *Id.*

Repairing by preſcription.

Yet it ſeems, that an indictment charging a tenant in fee ſimple, with having uſed of right to repair ſuch a way by reaſon of the tenure of his land, is certain enough, without adding, that his anceſtors, or thoſe whoſe eſtate he hath, have always ſo done; for that is implied. 1 *Haw.* 203.

But the indictment muſt ſet forth where thoſe lands lie. 2 *H. H.* 181.

Under which head of preſcription, may be conſidered the caſe where, not the whole pariſh, but particular townſhips or other diviſions within the pariſh, have for time immemorial repaired particular roads within that pariſh: Which preſcription, being ancient, and without interruption, is preſumed to have had its origin by licence on an inquiſition of *ad quod damnum*, or other legal commencement. And it would be very prejudicial in large pariſhes, if every inhabitant were liable to repair throughout that whole pariſh, when the time occupied in going and returning might exceed the time appointed by the law for labour.

Townſhips or other diviſions within a pariſh may be liable to repair.

But a private agreement amongſt the inhabitants, not being ancient, nor confirmed on an inquiſition of *ad quod damnum*, that ſome of the inhabitants ſhall repair one part of the highway, and ſome of them another part, is not good: It may be binding amongſt the parties thereunto, ſo as on a breach thereof one party may have an action upon the caſe againſt the other; but with reſpect to the publick, they continue equally liable as before; for ſuch private agreement cannot alter the law.

But on indictment the reaſon why they are to liable muſt be ſet forth.

In the caſe of *K.* and the inhabitants of *Great Broughton* in *Cumberland*, *H.* 11 *G.* 3. an indictment was brought in the uſual form, alleging that there is, and was from the time whereof the memory of man is not to the contrary, a common and ancient king's highway, leading from *Flimby Parts* and *Woodſide* to the market town of *Wigton* in the ſaid county; and that a certain part of the ſame king's common highway, at the pariſh of *Bridekirk* in the county aforeſaid, was and yet is very ruinous and decayed; and that the inhabitants of the diviſion of *Great Broughton* in the pariſh of *Bridekirk* aforeſaid, the common highway aforeſaid (ſo as aforeſaid being in decay) from the time whereof the memory of man is not to the contrary, *ought to repair and amend*, when and ſo often as it ſhall be neceſſary.——On a verdict being found againſt the inhabitants, a writ of error was brought in the king's bench; and the aſſignment of error was, that it is not ſhewn or alleged in the indictment, that the inhabitants of this diviſion *have uſed and been accuſtomed* and of right ought to repair and amend this highway, or in what right, or for what cauſe they ought to repair and amend it. On behalf of the defendants, it was objected, that by the common law, excluſive of cuſtom, preſcription, or other ſpecial obligation the inhabitants of a particular diviſion of a pariſh are not bound to repair; and here is no cuſtom, preſcription, or particular reaſon ſhewn, for obliging them to repair this highway: It is only alleged in general, that they *ought to repair and amend it*, when and ſo often as ſhall be neceſſary.——On the other hand it was contended, that it was ſufficiently charged as a preſcription: It is charged, that *from the time whereof the memory of man is not to the contrary* they ought to repair and amend it. A preſcription may be by implication; as particularly, *by reaſon of the tenure of their lands.*——By the court: At the common law, and of common right, the inhabitants of a pariſh at large are bound to repair the highways; and here is no reaſon ſhewn why this particular diviſion ſhould be obliged to do it. It ought to appear upon the face of the indictment, by what right the charge was laid upon this particular diviſion. If you lay a charge upon perſons againſt common right, you muſt ſhew how they are bound: and it is not enough to ſhew that they immemorially ought to repair, but it ſhould be ſhewn, that they *have repaired.* And the court therefore held this indictment for that reaſon to be bad, and reverſed the judgment. *Bur. Manſf.* 2700.

So

So alſo in the caſe of *K.* v. the hamlet of *Penderryn*, *T.* 28 *G.* 3. A preſentment had been made of a road by a juſtice upon his own view under 13 *G.* 3. *c.* 78. *ſ* 24. which, after ſtating that for time whereof, &c. there had been and yet was a common and ancient king's highway leading from the town of *Swanſea* in *Glamorganſhire*, to the town of *Llandilofowr* in *Carmarthenſhire*, and that certain parts of it lying in the pariſh of *Langevelach*, were out of repair, &c. and that the inhabitants of the parcel or hamlet of *Penderryn*, in the ſaid pariſh of *Llangevelack*, the ſaid common highway, ſo in decay, ought to repair and amend when and ſo often as it ſhould be neceſſary. This preſentment was removed by *certiorari*, and after verdict, it was moved in arreſt of judgment, that it was not ſtated, that the inhabitants were bound to repair the road by any *cuſtom* or *uſage*. *Morris* ſhewed cauſe againſt the rule, ſaying, that the form pointed out in the ſchedule to the act had been exactly followed, and that by the 69th *ſ.* it was provided, that no advantage ſhould be taken for want of form in any of the proceedings. That beſides it was ſtated, that the road had exiſted immemorially, and the court may refer the liability of the diſtrict to repair, which was expreſsly ſtated, to the ſame period of time. *Bevan*, in ſupport of the rule, argued, that none but the pariſh at large were bound of common right to the repair of high roads; and where ſmaller diſtricts are attempted to be charged, it muſt be ſhewn expreſsly *how* they are liable. This point has been expreſsly decided in this court in the caſe of *K.* v. *Linkfield ſtreet*, *N* 26 *G.* 3. That was a preſentment in the ſame form as the preſent, charging the inhabitants of the borough of *Linkfield-ſtreet* in the pariſh of *Rygate* with the repair of a road. After verdict, it was moved in arreſt of judgment, that as it was a preſentment againſt a particular diſtrict within a pariſh, it ſhould have ſtated particularly in what manner they were obliged to repair, whether by cuſtom, uſage, preſcription, &c. and that the general allegation that they ought to repair, was inſufficient; and he cited *Sty.* 163. *Andr.* 216. & *Burr.* 2700. *Mingay*, who ſhewed cauſe, admitted the principle, but contended that the general highway act 13 *G.* 3. *c* 78. which gave authority for the preſentment, had ſanctified the form in which it was drawn. But the court held the objection good, and the rule was made abſolute for arreſting the judgment. As to the objection that this preſentment followed the form preſcribed; that form only relates to pariſhes.——*Per curiam:* This preſentment is clearly bad, for

for being an artempt to charge *part of a parish only* with the repairs of the road, which is against common right, it must be shewn expressly *how* they were liable. This is an objection to the *substance*, and not merely to the *form*. Judgment arrested. *Durnf.* and *East*, 2 V. 513.

Repairs by private persons how to be enforced.

The surveyor shall from time to time give information upon oath to the justices, or two of them, of all such highways, and of all bridges, causeways, and pavements upon such highways as are out of repair, and ought to be repaired by any person or persons, bodies politick or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever; and the said justices shall limit a time for repairing the same; of which notice shall be given by the surveyor to the occupier or occupiers of the lands or tenements liable to such repairs, or to such other person or persons, bodies politick or corporate, as are chargeable with the same: And if such repairs shall not be effectually made within the time so limited, the said justices shall present such highways, bridges, causeways, or pavements, so out of repair, together with the person or persons, bodies politick or corporate, liable to repair the same, at the next general quarter sessions for the place where such highways shall lie: And the justices there, if they see cause, may direct the prosecution to be carried on at the general expence of such county, city, precinct, or liberty, and to be paid out of the general rates within such jurisdiction. 13 *G.* 3. *c.* 78. *s.* 23.

And where any lands have been or shall be given for the maintenance of causeways, pavements, highways, and bridges, the persons enfeoffed or trusted therewith shall let them to farm at the most improved yearly value, without fine. And the justices in their open sessions shall inquire, by such ways and means as they shall think fitting, into the value of such lands; and order the improvement and employment of the rents and profits thereof, according to the direction of the donor, if they find that the persons so intrusted have been negligent or faulty in the performance of their trust. Except such lands as have been given for the uses aforesaid to any college or hall in either of the universities of this kingdom, which have visitors of their own. *s.* 51.

Proportion of labour.

And by the 34 *G.* 3. *c.* 74. the surveyor, together with the inhabitants and occupiers of lands, tenements, woods, tithes, and hereditaments, shall, at proper seasons, in every year, use their endeavours for the repair of the high-

ways,

ways, and ſhall be chargeable thereto as followeth: That is to ſay,

Every perſon keeping a waggon, cart, wain, plough, or tumbrel, and *three* or more horſes or beaſts of draught uſed to draw the ſame, ſhall be deemed to keep a *team*, *draught*, or *plough*, and be liable to perform ſtatute duty with the ſame, in the pariſh, townſhip, or place where he reſides, and ſhall ſix days in every year, (if ſo many days ſhall be found neceſſary,) to be computed from *Michaelmas* to *Michaelmas*, ſend on every day, and at every place, to be appointed by the ſurveyor, for amending the highways in ſuch pariſh, townſhip, or place, *one* wain, cart, or carriage, furniſhed after the cuſtom of the country with oxen, horſes, or other cattle, and all other neceſſaries fit to carry things for that purpoſe, and alſo *two able men* with the ſame: which duty ſo performed ſhall excuſe every ſuch perſon from his duty in ſuch pariſh, townſhip, or place, in reſpect of all lands, tenements, woods, tithes, or hereditaments, not exceeding the annual value of 50l. which he ſhall occupy therein. *ſ.* 4.

Perſon keeping a team, draught, or plough, and not occupying above 50l. a-year in the pariſh where he reſides.

Every perſon keeping ſuch team, draught, or plough, and occupying in the *ſame* pariſh, townſhip, or place, lands, tenements, woods, tithes, or hereditaments of the yearly value of 50l. *over and beyond* the ſaid yearly value of 50l. in reſpect whereof ſuch team duty ſhall be performed;——and every ſuch perſon occupying lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50l. in any *other* pariſh, townſhip, or place, beſides that wherein he reſides;——and every other perſon, *not* keeping a team, draught, or plough, but occupying lands, tenements, woods, tithes, or hereditaments of the yearly value of 50l. in any pariſh, townſhip, or place:—ſhall find and ſend one wain, cart, or carriage, furniſhed with not leſs than *three horſes*, or four oxen and one horſe, or two oxen and two horſes, and *two able men* to each wain, cart, or carriage: And in like manner for *every* 50l. a-year reſpectively which every ſuch perſon ſhall further occupy in any pariſh, townſhip, or place reſpectively: ſuch wains, carts, or carriages to be employed by the ſurveyor in repairing the highways within the pariſh, townſhip, or place where ſuch eſtate lies. *Id.*

If occupying above 50l. a-year.

Every perſon who ſhall *not* keep a team, draught, or plough, but ſhall occupy ſuch eſtate *under* the yearly value of 50l. in the pariſh, townſhip, or place where he reſides, or in any other pariſh, townſhip, or place;——and every perſon *keeping* a team, draught or plough, and occupying

Perſons not keeping a team, draught, or plough; or keeping one, and occupying lands in another townſhip.

cupying ſuch eſtate under the yearly value of 50l. in any *other* pariſh, townſhip, or place than that wherein he reſides; ——— ſhall reſpectively contribute to the repair of the highways, and pay to the ſurveyor, in lieu of ſuch duty, the ſums following; *viz.* For every 20s. of the annual value of ſuch lands, tenements, woods, tithes, or hereditaments, one penny for every day's ſtatute duty; and in like manner ſhall pay one penny for every 20s. of the annual value of ſuch eſtate which he ſhall occupy in any ſuch pariſh, townſhip, or place reſpectively, above the annual value of 50l. and leſs than 100l.; and ſo for every 20s. that each progreſſive and intermediate annual value of 20s. which he ſhall ſo occupy, ſhall fall ſhort of the further increaſe of 50l. in every pariſh, townſhip, or place where ſuch lands, tenements, woods, tithes, and hereditaments ſhall reſpectively lie, for every day's ſtatute duty ſo to be required as aforeſaid. *Id.*

Keeping a team and not occupying 30l. a-year.

Provided, that no perſon keeping ſuch team, draught, or plough, and performing duty with the ſame as aforeſaid, in the pariſh, townſhip, or place where he reſides, and not occupying lands, tenements, woods, tithes, or hereditaments within the ſame, of the yearly value of 30l. ſhall be obliged to ſend more than *one* labourer, with ſuch team, draught, or plough. *Id.*

Sums to be deemed compoſitions, and to be recovered by the ſurveyor.

All which ſaid ſeveral ſums ſhall be conſidered as compoſitions, and ſhall be paid to the ſurveyor, at the time the compoſitions are to be paid under the authority of the aforeſaid act, or within ten days after; or in default of ſuch payments, the ſurveyor ſhall apply to a juſtice acting for ſuch diſtrict, who ſhall ſummon ſuch defaulter to appear at ſome ſpecial or petty ſeſſions to be holden for ſuch diſtrict, at which two juſtices, at the leaſt, ſhall be preſent, to ſhew cauſe why he refuſed or neglected to pay; and in default of appearance, or if on appearance he ſhall not make it appear to the ſatisfaction of ſuch juſtices, that he is poor and indigent, and as ſuch an object deſerving relief; ſuch money ſhall be levied by diſtreſs, in like manner as the forfeitures for neglect of ſtatute duty. Provided, that when the juſtices ſhall diſcharge any poor perſon from payment of ſuch rate or compoſition money, ſuch perſon ſhall, at the ſame time, be diſcharged from any expences in conſequence thereof. *Id.*

Poor perſons may be diſcharged from payment.

Juſtices may diſcharge poor perſons from ſuch rates.

And whereas it may frequently happen, that perſons wholly gaining their livelihood by the wages of daily labour, and occupying rateable property, by reaſon of age, ſickneſs, a numerous family, or misfortune, may be in poor

and indigent circumſtances, and it may be expedient in certain caſes to diſcharge ſuch perſons from all rates, aſſeſſments, or compoſition whatſoever: It is enacted, That on the application of any ſuch perſon to two juſtices at any ſuch ſpecial or petty ſeſſions, ſuch juſtices (having firſt given notice to the ſurveyor to appear on the part of the pariſh, townſhip, or place) ſhall examine into the ſituation and circumſtances of ſuch perſon, and if it ſhall appear to the ſatisfaction of ſuch juſtices, that he is really poor and indigent and deſerving of ſuch relief, they may exempt him from all ſuch rates, aſſeſſments, or compoſition. *ſ.* 5.

Keeping one or two horſe carts only.

Every perſon who ſhall not keep a team, draught, or plough, but ſhall keep one or more *cart* or *carts*, and one or two horſes or beaſts of draught only, uſed to draw in each of ſuch carts upon the highways, ſhall be obliged to perform his ſtatute duty for the like number of days, with ſuch cart or carts, and horſe or horſes, or beaſts of draught, and *one labourer* to attend each cart; or to pay for the lands, tenements, woods, tithes, and hereditaments, which he ſhall occupy, according to the rate herein-after mentioned, at the option of the ſurveyor. *ſ.* 2.

Keeping a coach, &c.

Every perſon who ſhall keep a coach, poſt-chaiſe, chair, or other wheel carriage, and not keep a team, draught, or plough, nor occupy 50l. a-year in the pariſh, townſhip, or place where he reſides, ſhall pay to the ſurveyor 1s. in reſpect of every ſuch day's ſtatute duty, for every horſe which he ſhall draw in any ſuch carriage; or ſhall pay according to the value of the lands, tenements, or hereditaments which he ſhall occupy, at the option of the ſurveyor. *Id.*

Team duty may be exchanged for labourers.

And if the teams, draughts, or ploughs, or any of them, ſhall not be thought needful by the ſurveyor, on any of the ſaid days; then every ſuch perſon who ſhould have ſent any ſuch team, draught, or plough according to the directions aforeſaid, ſhall, according to the notice given to him by the ſurveyor, ſend unto the ſaid work, for every one ſo ſpared, 3 able men; or pay 4s. 6d. in lieu thereof, at the option or the ſurveyor. *Id.*

Where teams are not neceſſary.

And where the employment for teams is of ſuch ſort, that two horſes will be ſufficient for one cart, or where a ſtand cart with one horſe ſhall be neceſſary, the ſurveyor may call upon any perſon liable to ſend a team, draught, or plough, according to this act, who keeps one or more cart or carts, and 3 or more horſes, to ſend ſuch cart or carts, horſe or horſes, to perform his ſtatute duty, as the ſurveyor ſhall find moſt convenient; and he ſhall allow every

every ſuch ſtand cart and one horſe as half a team, and every cart and two horſes as two thirds of a team. And if a waggon ſhall be found neceſſary for any particular buſineſs, the ſurveyor may require the duty, or any part thereof, to be performed with ſuch waggon by any perſon who keeps one. Which directions of the ſurveyor ſhall be obſerved, or the perſon liable to perform ſuch duty ſhall forfeit ſuch ſum as the duty ſo required of him ſhall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, draught, or plough. 13 *G.* 3. *c.* 78. *ſ.* 36.

Militia-men exempted.

But by 26 *G.* 3. *c.* 107. No ſerjeant, corporal, or drummer of the militia, nor any private man, from the time of his inrollment until his diſcharge, ſhall be obliged to perform any highway duty, commonly called ſtatute work. *ſ.* 130.

V. Compoſition inſtead of labour.

Compoſition for a team, draught, or plough.

Any perſon liable to perform the duty by ſending a team, draught, or plough, with men, horſes, or oxen in manner aforeſaid, may compound for the ſame, if he thinks fit, by paying to the ſurveyor ſuch ſum as the juſtices at their *Michaelmas* ſpecial ſeſſions in every year ſhall adjudge to be reaſonable, not exceeding 6s. nor leſs than 3s. for each team, draught, or plough, for each day; and in default of their adjudging the ſame, then the ſums of 4s. 6d.:——for every cart and one horſe or beaſt of draught 2s.:——for every cart with two horſes or beaſts of draught 3s.:——for and in lieu of each day's duty. 34 *G.* 3. *c.* 76. *ſ.* 3.

Juſtices may direct team duty to be performed in kind.

Provided always, that if it ſhall appear to the juſtices at their *Michaelmas* ſpecial ſeſſions, or any other ſpecial or petty ſeſſions, at which two juſtices ſhall be preſent, that in any place there will be a difficulty in procuring the neceſſary carriage, or a ſufficient number of labourers, without paying high and extravagant prices for the ſame; the ſaid juſtices may order the team duty, or ſo much thereof as they ſhall think fit, to be performed in kind, except in reſpect of ſuch teams as belong to perſons who do not occupy 30l. a-year. *ſ.* 6.

Labourers to do ſtatute duty on payment of the uſual wages.

And alſo, ſuch juſtices may order all ſuch perſons as gain their living by daily labour, or ſuch part of them as they may think fit, to perform ſix days' labour upon ſuch highways, in kind, either by themſelves or other ſufficient labourers, in caſe ſo many days' duty ſhall be required,

upon

upon being paid for ſuch labour the uſual wages given to labourers in ſuch place. *ſ.* 6.

Provided, that if part of ſuch teams or labourers only are required, it ſhall be directed by the ſaid order of the juſtices in ſome given proportion, as one half, third, or fourth part thereof; and the ſurveyor ſhall in that caſe, at a public veſtry, put the names of all the perſons liable to ſend ſuch teams into one hat, or box, and the names of all the perſons liable to perform ſuch labour into another hat or box, and ſome inhabitant then preſent ſhall draw out ſuch number from each, as ſhall be equal to the proportion ſo ordered by the juſtices; and the perſons ſo drawn ſhall perform ſuch duty in kind for that year. And if any ſuch order ſhall be made or continued in the ſubſequent year, the ſame method ſhall be obſerved, but the names drawn in the preceding year, ſhall not be put into ſuch hat or box. And in every ſucceeding year, ſuch method and regulation ſhall be obſerved by the ſurveyor, as to render the duty ſo required to be performed in kind as equal amongſt the ſeveral perſons liable thereto as may be. Which order of the ſaid juſtices, ſo far as the ſame ſhall be extended, ſhall ſuperſede the ſaid power or liberty of compounding, and ſhall be binding and effectual to all intents and purpoſes, and ſhall continue in force until it ſhall be diſcharged or varied by the juſtices at ſome ſubſequent ſpecial ſeſſions to be held in the week next after *Michaelmas* quarter ſeſſions. *Id.*

Where part of ſuch teams, or labourers only are required.

And if any perſon ſhall keep a team, draught, or plough, and ſhall not occupy 30l. a-year in the pariſh, townſhip, or place where he ſhall reſide, but ſhall in part maintain his horſes and beaſts of draught uſed in ſuch team, upon or from lands which he ſhall occupy in one or more adjacent pariſh or pariſhes; it ſhall be lawful for the juſtices, at ſome ſpecial ſeſſions, to mitigate and reduce the duty or compoſition in ſuch manner as they ſhall think reaſonable. 13 *G.* 3. *c.* 78. *ſ.* 40.

Provided, that the ſurveyor ſhall on ſome *Sunday* in *November* yearly cauſe ten days' notice (I) at leaſt to be given in the church or chapel, and if there be no church or chapel, or no ſervice be performed therein, then at the moſt publick place there, and repeat the like notice on the next ſucceeding *Sunday*, of the time and place when and where perſons permitted and inclined to compound may ſignify to the ſurveyor their intention ſo to do; and every perſon ſignifying the ſame, who ſhall then, or within one month after, pay to the ſurveyor the

aforeſaid compoſition, ſhall be diſcharged from the performance of ſuch duty. And no compoſition ſhall be permitted, unleſs the ſame be paid at the day, or within the time aforeſaid. *ſ.* 41.

Perſons changing their occupations.

But where the occupation ſhall be changed, or a new occupant or inhabitant ſhall come to reſide, after the time appointed for the compoſition; ſuch occupant or perſon coming to reſide, may be allowed to compound afterwards, provided they pay the compoſition money within 14 days after they ſhall enter upon the premiſſes. And every tenant or occupier, who intends to quit the poſſeſſion within ſix months from the time fixed for the compoſition may compound for half the duty; and the ſucceeding tenant or occupier may compound or perform the duty in kind for the other half. *Id.*

Keeping a draught or plough and no carriage.

Provided, that where a perſon ſhall keep a draught or plough, and no carriage; he ſhall pay to the ſurveyor 1s. for every horſe or pair of oxen or neat cattle uſed in ſuch draught or plough for each day's duty, or pay according to the yearly value of the eſtate which he occupies as aforeſaid, at the option of the ſurveyor. *ſ.* 42.

Where there are turnpike roads, a proportion of the compoſition to be paid to the turnpike ſurveyor.

And whereas by ſeveral acts of parliament concerning turnpike roads, a certain part of the duty called ſtatute duty is directed to be performed on ſuch roads, and it may happen in ſuch places, that the ſeveral perſons liable thereto may have compounded for the ſame; in ſuch caſe, the ſurveyor of the pariſh, townſhip, or place, where ſuch compoſition ſhall have been made, ſhall pay to the turnpike treaſurer or ſurveyor, a proportionable part of the compoſition money ſo received, according to the number of days' duty which ſuch perſons were liable to perform on ſuch turnpike road: which money ſhall be laid out on ſuch part of the ſaid turnpike road, as lies within the pariſh, townſhip, or place from which it was received, and not elſewhere. And if ſuch ſurveyor of the highways ſhall refuſe or neglect to pay to the turnpike treaſurer, or ſurveyor, ſuch part of the ſaid compoſition money ſo received by him, on demand thereof made, it ſhall be levied on his goods and chattels in like manner as penalties and forfeitures are to be levied by this act. *ſ.* 44.

VI. Working.

The juſtices may order what roads ſhall be repaired firſt.

The juſtices at a ſpecial ſeſſions may, by writing under their hands and ſeals, order thoſe highways (not being turnpike) which in their opinion do moſt want re-

pair, to be first amended, and at what time, and in what manner; according to which order (if such there be) the surveyors shall proceed within their respective limits, 13 *G.* 3. *c.* 78. *s.* 25. If the justices make no such order, then the surveyors shall have the like power of direction.

Exception of three months in the year.

Provided that, in order to prevent as much as possible any inconvenience to persons liable to perform statute duty, it shall be lawful for the inhabitants of any parish, township, or place, at a vestry, or other public meeting, to appoint 3 months in every year, within which no statute duty shall be performed; *viz.* one month in the spring to be called the seed month; one month in the summer, for the hay harvest; and one month in the summer for the corn harvest: Provided, that notice in writing be given of the time so appointed, to the surveyor of such parish, township, or place, and also to the surveyor of every turnpike road lying within the same, within three days after such meeting, and 14 days at least before the beginning of each of such months. 13 *G.* 3. *c.* 78. *s.* 43.

Notice of the time and place of working.

The surveyor shall give, or cause to be left at the house or usual place of abode of every person liable to perform statute duty, four days' notice (K) at the least, of the day, hour, and place upon which each of the said day's duty shall be required to be performed. *s.* 37.

Manner of working.

And all such persons as aforesaid, shall respectively bring with them such shovels, spades, picks, mattocks, and other tools and instruments, as are useful and proper for the purposes aforesaid. 34 *G.* 3. *c.* 74. *s.* 2.

And all the said persons and carriages shall diligently perform the work and labour to which they shall be appointed by the surveyor, for 8 hours in every of the said days, within such parish, township, or place, or in getting and carrying materials in and from any other parish, township, or place, to be employed in the repair of the highways of the parish, township, or place, for which they shall be required to perform such duty and labour as aforesaid. *Id.*

Penalty of not working according to the direction of the surveyor.

If any person sending a team as aforesaid, shall not send a sufficient labourer besides the driver (except as before mentioned); or if any such labourer or driver, or any other labourer, or the driver of any cart, shall refuse to work and labour according to the direction of the surveyor; or if any driver shall refuse to carry proper and sufficient loads, the surveyor may discharge every such

team, cart, or labourer, and recover from the owner of every ſuch team or cart, the forfeiture which every ſuch perſon would have incurred, in caſe no team, cart, or labourer reſpectively had been ſent. 34 *G.* 3. *c.* 74. *ſ.* 2.

Penalty of not attending.

And every perſon making default in finding and ſending ſuch wain, cart, or carriage, with ſuch able men as aforeſaid, ſhall forfeit 10s.; for every default in ſending a cart with one horſe and one man, 3s.; and for not ſending a cart with two horſes and one man, 5s.; and every perſon making default in ſending any ſuch labourer, or in performing ſuch labour at the time and place, and in the manner directed by this act, or in paying compoſition for the ſame, ſhall for every ſuch neglect forfeit 1s. 6d.: All which forfeitures ſhall be applied for the uſe of the highways within the pariſh, townſhip, or place, where the ſame ſhall ariſe. And the ſurveyor ſhall, with all convenient ſpeed, proceed for the recovery thereof, that the ſame may be recovered before he makes up his accounts. 13 *G.* 3. *c.* 78. *ſ.* 37.

Caſe where the whole duty is not needed.

If in any place it ſhall not be neceſſary to call forth the whole duty in any year, it ſhall be abated in a juſt and equal proportion. *Id.*

VII. Materials, how to be procured.

Getting materials.

The ſurveyor may take and carry away ſo much of the rubbiſh or refuſe ſtones of any *quarry* within his diſtrict (except ſuch as ſhall have been got by the ſurveyor of any turnpike road) without the licence of the owner of ſuch quarry, as he ſhall judge neceſſary for the amendment of the ſaid highways; but ſhall not dig or get ſtone in ſuch quarry without leave of the owner. 13 *G.* 3. *c.* 78. *ſ.* 27.

It ſhall alſo be lawful for ſuch ſurveyor, for the uſe aforeſaid, in any *waſte* land, or *common* ground, *river*, or *brook*, within his diſtrict, or within any other pariſh, townſhip, or place, wherein gravel, ſand, chalk, ſtone, or other materials are likely to be found (in caſe ſufficient cannot be conveniently had within the pariſh, townſhip, or place where they are to be employed, and in caſe ſufficient ſhall be left for the uſe of the roads in ſuch other pariſh, townſhip, or place) to ſearch for, dig, get, and carry away the ſame; ſo as he do not thereby divert or interrupt the courſe of ſuch river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the ſame out of any river or brook within the diſtance of 100 feet above or below any bridge, nor within the like diſtance of any

dam

dam or wear:——And likewiſe to gather *ſtones* lying upon any lands or grounds within the pariſh, townſhip, or place where ſuch highway ſhall be, for ſuch ſervice and purpoſe:——And to take and carry away ſo much of the ſaid materials, as by him ſhall be thought neceſſary for the amendment of the ſaid highways, without making any ſatisfaction for the ſaid materials: But ſatisfaction ſhall be made for all damages done to the lands of any perſon by carrying away the ſame, in the manner herein-after directed for getting and carrying materials in incloſed lands or grounds. 13 *G.* 3. *c.* 78. *ſ.* 21.

But no ſuch ſtones ſhall be gathered without the conſent of the occupier of the lands, or a licence from a juſtice, after having ſummoned the occupier and heard his reaſons (if he ſhall appear and give any) for refuſing his conſent. *Id.*

And provided alſo that nothing herein contained relative to the gathering or getting of ſtones, ſhall extend to any quantity of land (being private property) covered with ſtones thrown up by the ſea, commonly called Beach. *ſ.* 28.

And it ſhall be lawful for the ſurveyor, for the uſe aforeſaid, to ſearch for, dig, get, and carry away ſand, gravel, chalk, ſtone, or other materials, if ſufficient cannot conveniently be had within ſuch waſte lands, common grounds, rivers, or brooks, in and through any of the ſeveral or *incloſed* grounds of any perſon whomſoever, within the pariſh, townſhip, or place where the ſame ſhall be wanted, or by licence of two juſtices at a ſpecial ſeſſions, within any other pariſh, townſhip, or place, adjoining or lying near to the highway for which ſuch materials ſhall be required, if it ſhall appear to ſuch juſtices that ſufficient materials cannot be conveniently had in the pariſh, townſhip, or place where ſuch highways lie, or in the waſte lands, or common grounds, rivers, or brooks of ſuch adjacent pariſh, townſhip, or place, and that a ſufficient quantity of materials will be left for the uſe of the pariſh, townſhip, or place where the ſame ſhall be (ſuch lands not being garden, yard, avenue to a houſe, lawn, park, paddock, or incloſed plantation); the ſurveyor making ſuch ſatisfaction for the damage to be done to ſuch lands by the getting and carrying away the ſame, as ſhall be agreed upon between him and the owner, occupier, or other perſon intereſted, in the preſence and with the approbation of two or more ſubſtantial inhabitants; and if they cannot agree, then to be ſettled by a juſtice of the limit where the lands lie. *ſ.* 29.

And in ſuch places where, from the want of other materials, burnt *clay* may be ſubſtituted in the place thereof, it ſhall be lawful for the ſurveyor to dig clay in ſuch places as he is authorized to dig chalk or gravel, and to dry the ſame upon the lands adjoining, and to burn the ſame upon any waſte lands or common grounds, and to carry ſuch clay in ſuch manner as other materials are allowed to be carried by this act, upon making ſuch ſatisfaction for the damages within the ſeveral incloſed lands where ſuch clay ſhall be placed or carried, as herein directed with regard to other materials. *ſ.* 29.

Provided, that when the owner of ſuch incloſed lands ſhall have occaſion for any ſuch materials for the repair of any highway or other roads or ways upon his eſtate, or which he ſhall be under obligation to repair, and ſhall give notice to the ſurveyor that he apprehends there will not be ſufficient for thoſe purpoſes, and alſo for the uſe of the public highways: in ſuch caſe the ſurveyor ſhall not be permitted to dig, or take ſuch materials without the conſent of ſuch owner, or an order of two juſtices, after having ſummoned and heard the ſaid owner or occupier, or his ſteward or agent: which juſtices ſhall permit or reſtrain ſuch power, in ſuch manner, and under ſuch directions, as to them ſhall ſeem juſt. *Id.*

Provided, that no ſtone, gravel, or materials to be dug for the uſe of any other pariſh, townſhip, or place, than that wherein the ſame are found, ſhall be removed or carried from the place where they ſhall be ſo dug, at any other time than between the firſt of *April* and the firſt of *Nov.* or in the time of hard froſt in the winter ſeaſon. *ſ.* 32.

And if any perſon ſhall dig or cauſe to be dug materials contrary to the directions of this act, whereby any bridge, mill, building, dam, highway, ford, mines, or tin works, may be damaged or endangered, he ſhall forfeit not exceeding 5l. nor leſs than 20s. at the diſcretion of the court or juſtices before whom complaint ſhall be made. *ſ.* 33.

And where a ſufficient quantity of ſtone, gravel, chalk, or other materials, cannot be provided and carried by the labourers and teams within any pariſh, townſhip, or place; the ſurveyor ſhall contract for the getting and carrying thereof (in preſence of the aſſiſtant, if any ſuch be appointed) at a meeting to be held for that purpoſe; of which, ten days' notice in writing ſhall be given, by fixing the ſame upon the door of the church or chapel, or if there

there be no church or chapel, at the moſt publick place there; which notice ſhall ſpecify the work to be done, and the time and place for letting thereof. And if the ſurveyor ſhall have any ſhare or intereſt in ſuch contract, or in any other contract for work or materials, or ſhall upon his own account let to hire any team, or ſell or diſpoſe of any timber, ſtone, or other materials (unleſs a licence in writing for the ſale of ſuch materials, or for letting to hire ſuch team, be firſt obtained from a juſtice); he ſhall forfeit 10l. and be for ever after incapable to be employed as a ſurveyor with a ſalary. *ſ.* 49.

If any ſurveyor or perſon employed by him ſhall, by reaſon of the ſearching for, digging, or getting any gravel, ſand, ſtones, chalk, clay, or other materials, make any pit or hole in ſuch lands, rivers, or brooks as aforeſaid, wherein ſuch materials ſhall be found; he ſhall forthwith cauſe the ſame to be ſufficiently fenced off, and ſuch fence ſupported and repaired, during ſuch time as the ſaid pit or hole ſhall continue open; and after having dug up ſufficient materials in ſuch pit or hole, he ſhall within 14 days cauſe the ſame to be filled up, ſloped down, or fenced off, and ſo continued. And where no materials ſhall be found, he ſhall within 3 days cauſe ſuch hole or pit to be filled up, levelled, and covered with the turf or clod which was dug out of the ſame. *ſ.* 31. Filling up holes.

And every ſurveyor ſhall, within 20 days after he ſhall be appointed to that office, cauſe all the pits and holes which ſhall then be open, and not likely to be further uſeful, to be filled up or ſloped down in manner aforeſaid; and if they are likely to be further uſeful, he ſhall ſecure them by poſts, and rails, or other fences, to prevent accidents to perſons or cattle. *Id.*

And if ſuch ſurveyor or other perſon ſhall neglect to fill up, ſlope down, or fence off ſuch pit or hole, in manner and within the time aforeſaid, he ſhall forfeit 10s. And if he ſhall neglect to fence off ſuch pit or hole, or to ſlope down the ſame, as herein-before directed, for ſix days after he ſhall have received notice for either of thoſe purpoſes from a juſtice, or from the owner or occupier of ſuch ſeveral ground, river, or brook, or any perſon having right of common within ſuch common or waſte lands; he ſhall, on conviction before one juſtice, forfeit not exceeding 10l. nor leſs than 40s.; the ſame to be applied in the fencing off, filling up, or ſloping down ſuch pit or hole, and towards repair of the roads in the pariſh or place

where the offence was committed, as ſuch juſtice ſhall direct. *ſ.* 31.

VIII. Removing obſtructions and annoyances.

Annoyances in general.

There is no doubt, but that all injuries whatſoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it leſs commodious to the king's people, are public nuſances at common law. 1 *Haw.* 212.

And by the common law, any one may abate a nuſance to a highway, and remove the materials, but not convert them to his own uſe. 1 *Haw.* 214.

Alſo it ſeemeth that an heir may be indicted for continuing an encroachment, or other nuſance to a highway, begun by his anceſtor; becauſe ſuch a continuance thereof amounts in the judgment of the law to a new nuſance. 1 *Haw.* 214.

To ſuffer the ditches adjoining to a highway to be foul, by reaſon whereof it is impaired, is a nuſance alſo at common law. 1 *Haw.* 212.

And it ſeemeth clear, that it is a nuſance at common law, to ſuffer the boughs of trees growing near the highway, to hang over the road in ſuch a manner, as thereby to incommode the paſſage. 1 *Haw.* 212.

And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the ſame; and it ſeems clear, that any perſon may juſtify the lopping ſuch trees, ſo far as to avoid the nuſance. 1 *Haw.* 213.

A gate erected in a highway, is a common nuſance, becauſe it interrupts the people in that free and open paſſage which they before enjoyed, and were lawfully entitled to; but where ſuch a gate has continued time out of mind, it ſhall be intended, that it was ſet up at firſt by conſent, on a compoſition with the owner of the land on the laying out the road, in which caſe the people had never any right to a freer paſſage than what they ſtill enjoy. 1 *Haw.* 199.

Trees and hedges.

No tree, buſh, or ſhrub ſhall be permitted to ſtand or grow in any highway, within the diſtance of 15 feet from the centre thereof (except for ornament or ſhelter to the houſe building, or court yard of the owner thereof);

or

or hereafter be planted within the diſtance aforeſaid: But the ſame ſhall be cut down, grubbed up, and carried away, by the owner or occupier of the land or ſoil, within ten days after notice to him or his agent by the ſurveyor; on pain of 10s. 13 *G.* 3. *c.* 78. *ſ.* 6.

And the poſſeſſors of the land next adjoining ſhall cut, prune, or plaſh their hedges; and alſo cut down or prune and lop the trees growing in or near ſuch hedges or other fences (except thoſe trees planted for ornament or ſhelter as aforeſaid), in ſuch manner, that the highway ſhall not be prejudiced by the ſhade thereof, and that the ſun and wind may not be excluded from ſuch highway to the damage thereof. And if ſuch poſſeſſor ſhall not within ten days after notice (L) given by the ſurveyor, cut, prune, and plaſh ſuch hedges, and cut down or prune and lop ſuch trees; the ſurveyor may complain to a juſtice, who ſhall ſummon the poſſeſſor of the ſaid lands to appear before the juſtices at ſome ſpecial ſeſſions to anſwer to the ſaid complaint; and if it ſhall appear to the juſtices at ſuch ſpecial ſeſſions, that ſuch poſſeſſor hath not complied with the requiſites of this act, the ſaid juſtices, upon hearing the ſurveyor and poſſeſſor of ſuch land or his agent (or, in default of appearance, on having due proof of the ſervice of ſuch ſummons) may order ſuch hedges to be cut, plaſhed, and pruned, and ſuch trees to be cut down or pruned, in ſuch manner as may beſt anſwer the purpoſes aforeſaid. And if the poſſeſſor of ſuch land ſhall not within ten days obey ſuch order on notice thereof, he ſhall forfeit 2s. for every 24 feet in length of ſuch hedge which ſhall be neglected to be cut and plaſhed, and 2s. for every tree which ſhall be neglected to be cut down, or pruned, and lopped; and the ſurveyor ſhall cauſe the ſame to be done, and the poſſeſſor ſhall pay, over and above the penalties, the charges and expences (M) of doing the ſame; to be levied by diſtreſs by warrant of one juſtice. *ſ.* 7.

Provided, that no perſon ſhall be compelled, or any ſurveyor permitted, to cut or prune any hedge at any other time, than between the laſt day of *Sept.* and the laſt day of *March*; and that no perſon ſhall be obliged to fell any timber trees growing in hedges at any time whatſoever, except where the highways ſhall be ordered to be enlarged as herein-after mentioned, or to cut down or grub up any oak trees growing in ſuch highway or in ſuch hedges, except in the months of *April*, *May*, or *June*, or any aſh, elm,

or

or other trees, in any other months than *Dec. Jan. Feb.* or *March*. *ſ.* 13.

Ditches, drains, and water-courſes.

And ditches, drains, or watercourſes, of a ſufficient depth and breadth for keeping the highways dry and conveying the water from the ſame, ſhall be made, ſcoured, cleanſed, and kept open, and ſufficient trunks, tunnels, plats, or bridges, ſhall be made and laid, where any cart-ways, horſe-ways, or foot-ways, lead out of the ſaid highways into the lands adjoining thereto, by the occupier of ſuch lands; and every perſon who ſhall occupy any lands adjoining to or near the highway, through which the water hath uſed to paſs from the ſaid highway, ſhall open, cleanſe, and ſcour the ditches, watercourſes, or drains for ſuch water to paſs without obſtruction: And every perſon making default in any of the matters aforeſaid, after ten days' notice given by the ſurveyor, ſhall forfeit 10 s. *ſ.* 8.

And where the ditches, gutters, or watercourſes, which have been uſually made, or which are herein directed to be made, cleanſed, and kept open, ſhall not be ſufficient to carry off the water which ſhall lie upon and annoy the highways; in ſuch caſe, it ſhall be lawful for the ſurveyor, by order of one juſtice (N) to make new ditches and drains, in and through the lands adjoining or lying near to ſuch highways, or in and through any other lands, if it ſhall be neceſſary, for the more eaſy and effectual carrying off ſuch water from the ſaid highways, and alſo to keep ſuch ditches, gutters, or watercourſes ſcoured, cleanſed, and opened; and the ſurveyors and their workmen may go upon the ſaid lands for that purpoſe: Provided, that the ſaid ſurveyor make proper trunks, tunnels, plats, bridges, or arches, over ſuch ditches, gutters, or watercouſes, where the ſame ſhall be neceſſary, for the convenient uſe and enjoyment of the lands through which the ſame ſhall be made, and from time to time keep the ſame in repair; and do alſo make ſatisfaction to the owner or occupier of ſuch lands which are not waſte or common, for the damages which he ſhall ſuſtain thereby; to be ſettled and paid in ſuch manner as the damages for getting materials in ſeveral or incloſed grounds are herein directed to be ſettled and paid. *ſ.* 14.

Straw, dung, or other matter laid in the highway.

If any perſon ſhall lay in any highway, any ſtone, timber, ſtraw, dung, or other matter; or in making, ſcouring, or cleanſing the ditches or watercourſes, ſhall permit the ſoil or earth dug out thereof, to remain in the high-

way,

way, ſo as to obſtruct or prejudice the ſame, for five days after notice (L) by the ſurveyor; he ſhall forfeit 10s. 13 G. 3. c. 78. ſ. 9.

And if any ſtone or timber, or any hay, ſtraw, ſtubble, or other matter, for the making of manure, or on any other pretence not tolerated by this act, ſhall be laid in any highway within 15 feet from the centre thereof; and ſhall not within 5 days after notice given by the ſurveyor or ſome perſon aggrieved thereby, be removed; the owner or poſſeſſor of the lands adjacent, or any other perſon by order of a juſtice, may clear the ſaid highway, by removing the ſtone, timber, hay, ſtraw, dung, or other matter, and have the ſame to his own uſe. ſ. 10.

Incroaching on the highway.

If any perſon ſhall incroach by making or cauſing to be made any hedge, ditch, or other fence on any highway not being turnpike road, within the diſtance of 15 feet from the middle or centre thereof; or ſhall plough, harrow, or break up the ſoil of any land or ground, or in ploughing or harrowing the adjacent lands ſhall turn his plough in or upon any land or ground, within the diſtance of 15 feet from the middle or centre of any highway, where the breadth of ſuch highway is formed and marked or deſcribed with certainty, and doth not exceed in breadth 30 feet, he ſhall forfeit 40s. to him who ſhall make information thereof: And the ſurveyor may cauſe ſuch hedge, ditch, or fence to be taken down, or filled up, at the expence of the perſon to whom the ſame ſhall belong: And one juſtice, on proof to him made upon oath, may levy as well the expences of taking down ſuch hedges, as the ſaid penalty by diſtreſs. ſ. 63.

Surveyor to give notice and cauſe defects to be amended.

The ſurveyor ſhall, at all ſuch times as he ſhall judge proper, view all the common highways, trunks, tunnels, plats, hedges, ditches, banks, bridges, cauſeways, and pavements; and if he ſhall obſerve any nuſances, incroachments, obſtructions, or annoyances, he ſhall give to any perſon doing or permitting the ſame perſonal notice, or notice in writing (L) to be left at his uſual place of abode, ſpecifying the particulars: And if ſuch nuſances, obſtructions, or annoyances ſhall not be removed; and the ditches, drains, gutters, and watercourſes aforeſaid effectually made, ſcoured, cleanſed, and opened; and ſuch trunks, tunnels, plats, and bridges made and laid; and ſuch hedges properly cut and pruned, within 20 days after ſuch notice, then the ſurveyor ſhall do the ſame, and the perſon neglecting ſhall forfeit for every foot in length one penny, and over and above the ſaid forfeiture

the

the ſurveyor ſhall by ſuch perſon be reimburſed his charges and expences in doing the ſame; and if not paid on demand, the ſurveyor ſhall apply to a juſtice, and on making oath before him of the notice being given as aforeſaid, and of the work being done, and of the expences attending the ſame, the ſurveyor ſhall be repaid by ſuch perſon all ſuch charges as ſhall be allowed to be reaſonable by the ſaid juſtice (1); and if not paid on demand, the ſame ſhall be levied as other penalties and forfeitures by this act. *ſ.* 12.

Carriages or implements of huſbandry left in the highway.

If any perſon ſhall willfully ſet or leave any waggon, cart, or other carriage, or any plough or inſtrument or huſbandry in any highway (except only with reſpect to ſuch waggon, cart, or carriage, during ſuch reaſonable time as the ſame ſhall be loading or unloading, and ſtanding as near the ſide of ſuch highway as conveniently may be) ſo as to interrupt or hinder the free paſſage of any other carriage, or of his majeſty's ſubjects; he ſhall forfeit 10s. *ſ.* 11.

Drivers of carriages miſbehaving.

By the 1 *G. ſt.* 2. *c.* 57. If any perſon driving any cart, dray, or waggon, in the ſtreets of *London*, ſhall ride upon the ſame, not having ſome other perſon on foot to guide the ſame, he ſhall on conviction before the alderman of the ward, or a juſtice of the peace, on oath of one witneſs, forfeit 10s. by diſtreſs and ſale; half to the informer, and half to the poor; and in default of payment, to be ſent to the houſe of correction for three days. *ſ.* 8.

And by the 24 *G.* 2. *c.* 43. If any carter, drayman, carman, waggoner, or other driver ſhall ride upon the ſame in *London* or within ten miles thereof, not having ſome other perſon on foot to guide the ſame, he ſhall on the like conviction, forfeit 10s. in caſe ſuch driver ſhall not be the owner of ſuch carriage; and in caſe he be the owner, then any ſum not exceeding 20s. To be recovered, levied, and applied, as by the aforeſaid act of the 1 *G. ſt.* 2. *c.* 57. And any perſon, though not a peace officer, may ſtop and apprehend ſuch offender, and carry him as ſoon as conveniently may be before a juſtice; and if any perſon ſhall reſiſt, abuſe, or prevent any perſon endeavouring to apprehend ſuch offender, or when he is apprehended, ſhall reſcue, or endeavour to reſcue him, he ſhall forfeit 20s. in like manner. *ſ.* 8, 9.

By the 30 *G.* 2. *c.* 22. If the driver of any carriage within *London* or *Weſtminſter*, or in any publick ſtreet or common highway within the bills, ſhall by negligence or wilful

wilful miſbehaviour, interrupt the free paſſage of his majeſty's ſubjects; he ſhall on conviction by confeſſion or oath of one witneſs, before one juſtice, forfeit any ſum not exceeding 20s. or be committed to the houſe of correction, or ſome other priſon of the place where the offence ſhall have been committed, or the offender ſhall have been apprehended, to be kept to hard labour for any time not exceeding one kalendar month. The ſaid forfeiture to be levied by diſtreſs by warrant of ſuch juſtice; and to be half to the proſecutor, and half to the overſeers for the uſe of the poor of the pariſh or place where the offence ſhall be committed, or the offender ſhall be apprehended; and if there be no overſeer, then to ſome other officer for the uſe of the poor as aforeſaid. *ſ.* 7. 12.

And any perſon who ſhall ſee any offence committed againſt this act, may by authority of this act and without any other warrant apprehend the offender, and ſhall with all convenient ſpeed convey or deliver him to a conſtable or other peace officer of the place where the offence ſhall be committed, or the offender ſhall be apprehended, in order to be conveyed before a juſtice, there to be dealt with according to law. *ſ.* 13.

And if he ſhall refuſe to diſcover his name and place of abode to the juſtice before whom he ſhall be brought, he ſhall be immediately delivered over to a conſtable or other peace officer, and ſhall by him be conveyed to the common gaol or houſe of correction of the place where the offence ſhall be committed, there to remain until he ſhall declare his name and place of abode to the ſaid juſtice, or to ſome other juſtice of ſuch place. *ſ.* 11.

And any perſon ſhall be admitted to be an evidence, notwithſtanding his being an inhabitant of the place where the offence ſhall be committed. *ſ.* 14.

Provided, that perſons puniſhed by this act ſhall not be puniſhed by any former law. *ſ.* 15.

And more generally, by the 13 *G.* 3. *c.* 78. Whereas many bad accidents happen, and great miſchiefs are frequently done upon the ſtreets and highways, by the negligence or wilful miſbehaviour of perſons driving carts thereon; it is enacted, That if the driver of any cart, car, dray, or waggon, ſhall ride upon any ſuch carriage in any ſtreet or highway, not having ſome other perſon on foot or on horſeback to guide the ſame (ſuch carriages as are conducted by ſome perſon holding the reins of the horſe or horſes drawing the ſame excepted);—or if the driver of any carriage whatſoever, on any part of any

ſtreet or highway, ſhall by negligence or wilful miſbehaviour cauſe any hurt or damage to any perſon or carriage paſſing or being upon ſuch ſtreet or highway;—or ſhall quit the highway and go on the other ſide of the hedge or fence incloſing the ſame;—or wilfully be at ſuch diſtance from ſuch carriage, whilſt it ſhall be paſſing upon the highway, that he cannot have the direction and government of the horſes or cattle drawing the ſame: or ſhall, by negligence or wilful miſbehaviour, prevent, hinder or interrupt the free paſſage of any other carriage, or of his majeſty's ſubjects, on the ſaid highways; or if the driver of any empty or unloaded waggon, cart, or other carriage ſhall refuſe or neglect to turn aſide and make way for any coach, chariot, chaiſe, loaded waggon, cart, or other loaded carriage; or if any perſon ſhall drive, or act as the driver, of any ſuch coach, poſt chaiſe, or other carriage let for hire, or waggon, wain, or cart, not having the owner's name (as by this act is directed) painted thereon, or ſhall refuſe to diſcover the true chriſtian and ſurname of the owner of ſuch reſpective carriage; he ſhall, on conviction by confeſſion, view of the juſtice, or oath of one witneſs, before one juſtice, forfeit any ſum not exceeding 10s. in caſe ſuch driver be not the owner of ſuch carriage, and if he be the owner, then any ſum not exceeding 20s.; and in default of payment be committed to the houſe of correction for any time not exceeding one month, unleſs the ſame be ſooner paid. And every ſuch driver offending in either of the ſaid caſes, may by authority of this act, with or without any warrant, be apprehended by any perſon who ſhall ſee ſuch offence committed, and ſhall be immediately conveyed or delivered to a conſtable or other peace officer, to be conveyed before a juſtice, to be dealt with according to law. And if any driver, in any the caſes aforeſaid, ſhall refuſe to diſcover his name, the juſtice may commit him to the houſe of correction for any time not exceeding 3 months, or may proceed againſt him for the penalty by a deſcription of his perſon and the offence, and expreſſing in the proceedings that he refuſed to diſcover his name. *ſ.* 60.

The owner's name and place of abode to be put on carriages.

And for the better diſcovering of offenders, the owner of every waggon, wain, or cart, and alſo of every coach, poſt chaiſe, or other carriage, let to hire, ſhall cauſe to be painted, upon ſome conſpicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all ſuch coaches, poſt chaiſes, or other carriages, before the ſame ſhall be uſed in any publick highway, his chriſtian and

and ſurname and place of abode, in large legible letters; and continue the ſame thereupon ſo long as ſuch carriage ſhall be uſed upon any highway: And the owner of every common ſtage waggon or cart ſhall, over and above his chriſtian and ſurname, cauſe to be painted on the part and in the manner aforeſaid, the following words, *common ſtage waggon or cart*, as the caſe may be. And every perſon uſing any ſuch carriage as aforeſaid upon any highway, without the ſaid names and deſcriptions reſpectively, or cauſing to be painted thereon any fictitious name or place of abode, ſhall forfeit not exceeding 5l. nor leſs than 20s. *ſ.* 59.

Alehouſes not to be near bridges.

And for preventing obſtructions near public bridges, if any perſon, collecting any tolls payable for paſſing over any public bridge with carriages or cattle of any kind, ſhall keep any victualling houſe, alehouſe, or other place of public entertainment, or ſhall ſell, or permit to be ſold therein, any wine, beer, ale, cyder, ſpirituous liquors, or other ſtrong liquors, by retail, he ſhall, on conviction before one juſtice, by confeſſion, or oath of one witneſs, forfeit. 5l. *ſ.* 62.

IX. Direction poſts, blocks, mileſtones, water marks, and battlements of bridges.

Direction poſts.

The juſtices at a ſpecial ſeſſions ſhall iſſue their precept (O) to the ſurveyor, where ſeveral highways meet, and there is no proper or ſufficient direction poſt or ſtone already fixed or erected, requiring him forthwith to cauſe to be erected or fixed, in the moſt convenient place where ſuch ways meet, a ſtone or poſt, with inſcriptions thereon, in large legible letters painted on each ſide thereof, containing the name or names of the next market town or towns, or other conſiderable place or places to which the ſaid highways lead; and alſo at the ſeveral approaches or entrances to ſuch parts of any highways, as are ſubject to deep or dangerous floods, graduated ſtones or poſts, denoting the depth of water in the deepeſt part of the ſame, and likewiſe ſuch direction poſts or ſtones as the ſaid juſtices ſhall judge to be neceſſary for the guiding of travellers in the beſt and ſafeſt tract through the ſaid floods of waters: And if he ſhall refuſe or neglect, by the ſpace of 3 months, to cauſe ſuch ſtones or poſts to be fixed, he ſhall forfeit 20s. 13 *G.* 3. *c.* 78. *ſ.* 26.

Horſe and foot cauſeways.

And whereas in ſome places it may be neceſſary to ſecure horſe and foot cauſeways by poſts, blocks, or great

great ſtones fixed in the ground, or by banks of earth caſt up, or otherwiſe, from being broken up and ſpoiled with waggons, wains, carts, or carriages; and foraſmuch as divers evil diſpoſed perſons do wilfully or wantonly pull up, cut down, and remove or damage the ſaid poſts, blocks, and great ſtones, and drive carriages upon ſuch banks and cauſeways or againſt the ſides thereof, and alſo dig or caſt down the ſaid banks, whereby the cauſeways or banks are often ruined and deſtroyed; and ſuch evil diſpoſed perſons do or may break, damage, or throw down the ſtones, bricks, or wood, fixed upon the parapets or battlements of bridges; and pull down, deſtroy, obliterate, or deface any mile ſtone or poſt, graduated, or direction poſt or ſtone, erected upon any highway: For prevention thereof, it is enacted, that every perſon who ſhall be guilty of any ſuch offence, ſhall upon conviction before one juſtice, by the oath of one witneſs, or upon view of the juſtice, forfeit not exceeding 5 l. nor leſs than 10s.; and in default of payment, ſhall be committed to the houſe of correction, there to be whipped and kept to hard labour for any time not exceeding one kalendar month, nor leſs than 7 days. *ſ.* 52.

Deſtroying parapets, battlements of bridges, or mile-ſtones.

X. Breadth of wheels, and number of horſes.

Breadth of wheels and number of horſes.

Whereas the highways, not being turnpike roads, are much prejudiced by the narrowneſs of the wheels of the ſeveral carriages travelling thereon, and by the exceſſive burdens loaded in ſuch carriages; it is enacted, That no waggon, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall be drawn with more than 8 horſes; and no cart, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall be drawn with more than 5 horſes:

And no waggon, having the ſole or bottom of the fellies of the wheels of the breadth of 6 inches, and rolling on each ſide a ſurface of 9 inches, ſhall be drawn with more than 7 horſes:

And no waggon, rolling a ſurface of 6 inches only, ſhall be drawn with more than ſix horſes; and no cart, having the ſole or bottom of the fellies of the wheels of the breadth of 6 inches, ſhall be drawn with more than 4 horſes:

And no waggon, having the ſole or bottom of the fellies of the wheels of leſs breadth than 6 inches, ſhall be drawn with more than 5 horſes; and no cart having the ſole or bottom of the fellies of leſs breadth than 6 inches, ſhall be drawn with more than 3 horſes: On

On pain that the owner ſhall forfeit 5l. and the driver (not being the owner) 10s. for every horſe or beaſt above the number reſpectively, to the ſole uſe of the informer. 13 G. 3. c. 78. ſ. 55.

But carriages moving upon wheels or rollers of the breadth of 16 inches on each ſide thereof, with flat ſurfaces, ſhall be allowed to be drawn with any number of horſes or other cattle. *Id.*

And provided, that no proſecution ſhall be commenced before a juſtice, againſt ſuch owner or driver, unleſs the information be laid within three days; and no action ſhall be commenced unleſs within one kalendar month after the offence committed; and neither information nor action ſhall be brought, unleſs notice be given by the informer to the driver, on the day whereon the offence ſhall be committed, of an intention to complain of ſuch offence: And if it ſhall appear to the juſtice before whom the complaint ſhall be made, that the offender lives ſo remote as to make it inconvenient to ſummon him to appear before ſuch juſtice, the ſaid juſtice may diſmiſs the complaint, and leave the informer to his remedy by action at law. ſ. 56.

Exception as to ſteep hills.

And provided always, that the juſtices at the *Michaelmas* quarter ſeſſions may licenſe in ſuch manner and for ſuch time as they ſhall think fit, an increaſe in the number of horſes to be drawn in carriages up any ſteep hill, or on any road not turnpike, over and above the number herein before limited; and from time to time, at any *Michaelmas* quarter ſeſſions, may revoke, alter, or vary the ſame as they ſhall think fit. ſ. 57.

And ſnow and ice.

And provided, that if it ſhall appear, upon the oaths of credible witneſſes, to the ſatisfaction of any juſtice of the peace, or of any court of juſtice authorized to inforce the execution of this act, that any waggon, cart, or carriage, could not, by reaſon of deep ſnow or ice, be drawn by the number of horſes or beaſts of draught hereby allowed; they may ſtop the proceedings before them for recovery of the forfeiture. ſ. 58.

And large ſtones, &c.

Provided alſo, that nothing herein, concerning the number of horſes and wheels of carriages, ſhall extend to carts, waggons, or other carriages, employed only in carrying any one ſtone, block of marble, cable rope, or piece of metal, or piece of timber, or to ſuch ammunition or artillery as ſhall be for his majeſty's ſervice. *Id.*

And for all the purpoſes of this act, two oxen or horned cattle ſhall be conſidered as one horſe. *Id.*

Regulations in London and Weſtminſter.

With reſpect particularly to the cities of *London* and *Weſtminſter* and parts adjacent, it is enacted by the 6 *G. c.* 6. that no perſon in *London* and *Weſtminſter*, or within 10 miles thereof, ſhall carry at any one load, in waggons or carts having their wheels ſhod with iron, more than 12 ſacks of meal of 5 buſhels each, nor more than 12 quarters of malt, nor more than 700½ of bricks, nor more than one chaldron of coals; on pain of forfeiting any one of the horſes, with the geers, bridles, and halters therewith uſed, in ſuch manner and to ſuch uſes, as by the 5 *G. c.* 12. (now repealed.)

And by the 18 *G.* 2. *c.* 33. The wheels of every cart, car, or dray, within the bills of mortality, ſhall be ſix inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horſes, after they are up the hills from the waterſide; on pain of 40 s. by warrant of one juſtice, by diſtreſs; and for want of diſtreſs, on non-payment in ſix days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that ſhall bring any goods, or ſhall carry any goods half a mile beyond the paved ſtreets of the ſaid cities and places.

Alſo any perſon, within the ſaid limits, uſing any cart, car, or dray, having the wheels full ſix inches broad, when worn, may have the ſame bound round with tire of iron, provided it be ſix inches broad, and made flat, and not ſet on with roſe-headed nails.

XI. Breadth, widening, changing, and diverting of highways.

Highways may be changed by a writ of *ad quod damnum*.

By the common law an ancient highway cannot be changed, without the king's licence firſt obtained upon a writ of *ad quod damnum* and an inquiſition thereon found, that ſuch a change will not be prejudicial to the publick; and it is ſaid, that if one change a highway without ſuch authority, he may ſtop the new way whenever he pleaſes; and it ſeemeth that the king's ſubjects have not ſuch an intereſt in ſuch new way, as will make good a general juſtification of their going in it, as a common highway, but that in an action of treſpaſs brought by the owner of the land againſt thoſe who ſhall go over it, they ought to ſhew ſpecially, by way of excuſe, how the old way was obſtructed, and the new one ſet out; alſo it is ſaid, that the inhabitants are not bound to keep watch in ſuch a new way,

or

or to make amends for a robbery therein committed, or to repair it. 1 *Haw.* 201.

But by the 13 *G.* 3. *c.* 78. Where any highway ſhall be incloſed after a writ of *ad quod damnum* iſſued, and inquiſition thereupon taken; any perſon that ſhall think himſelf injured by ſuch incloſure, may appeal to the next general quarter ſeſſions, if there be time for that purpoſe; if not, to the next ſeſſions after: And the determination of ſuch ſeſſions ſhall be final. *ſ.* 19.

[Note; The writ of *ad quod damnum* is an original writ, iſſuing out of and returnable into the chancery, directed to the ſheriff to inquire by a jury, whether ſuch change will be detrimental to the publick; which inquiſition, being a proceeding only *ex parte*, is in its own nature traverſable, and heretofore the party grieved might be heard againſt it before the chancellor: but now, by this act, juriſdiction is given to the juſtices in ſeſſions to hear and determine appeals concerning the ſame.]

Where a new road is made, in purſuance of ſuch writ and inquiſition thereupon found, after the perſon who ſued out the writ hath once made the ſaid road, the pariſhioners ought to keep it in repair for the future; becauſe, being diſcharged from the repairing of the old road, no new burden is laid upon them, but their labour is only transferred from one place to another. 3 *Atk.* 766.

But if the new road lies in another pariſh, then the perſon who ſued out the writ, and his heirs, ought not only to make it, but to keep it in repair; otherwiſe the pariſhioners of ſuch other pariſh would have a new charge upon them, and no recompence by the former road being taken away. *Id. Venner* and *Lucy*, *Jan.* 29, 1764.

Alſo, it is certain, that a highway may be changed by the act of God; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes it courſe, and goes over different ground from that whereon it uſed to run, yet the highway continues in the new channel, in the ſame manner as in the old. 1 *Haw.* 202. Or by the act of God.

An highway incloſed by virtue of a ſpecial act of parliament (for dividing and incloſing common fields, common paſtures, or the like) ſhall continue to be repaired by the pariſh or townſhip as it was before, unleſs otherwiſe directed by the act: For if he who incloſed the ground adjoining to the highway where in ſuch caſe obliged to repair, it might happen that his allotment of the common would not be worth the expence of repairing the Or by act of parliament.

way. *Bur. Mansf.* 461. *K.* and the inhabitants of *Flecknow. H.* 30 *G.* 2.

Or by two justices.

In aid of the common law, and to render the changing of highways less troublesome and expensive, power is given by the 13 *G.* 3. *c.* 78. to the justices of the peace, to widen, divert, and change highways, as they shall judge most convenient.

In order to which, it is enacted, That the surveyor shall make every public cartway leading to any market town 20 feet wide at the least, and every public horse way or drift way 8 feet wide at the least, if the ground between the fences inclosing the same will admit thereof. And where it shall appear, upon the view of two justices, that any highway between the fences thereof is not of sufficient breadth, and may be conveniently widened and enlarged; or that the same cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the same; the said justices shall order (P) such highway respectively to be widened and enlarged, or diverted and turned, in such manner as they shall think fit; so that the said highway when enlarged and diverted shall not exceed 30 feet in breadth; and that neither of the said powers do extend to pull down any house or building, or to take away the ground of any garden, park, paddock, court, or yard. *S* 15, 16.

Satisfaction to be made to the owner of the ground.

And for satisfaction of the person or persons, bodies politic or corporate, who are seised or possessed of, or interested, in their own right, or in trust for any other, in the ground that shall be laid into the said highway so to be enlarged, or through which the said highway so to be diverted and turned shall go: the said surveyor, under the direction and with the approbation of the said justices, shall make an agreement with them for the recompence to be made for such ground, and for the making such new ditches and fences as shall be necessary, in proportion to their several interests; and also with any other person, body politic or corporate, that may be injured by the enlarging or diverting such highways as aforesaid. And if the said surveyor cannot agree with them, or if they cannot be found, or shall refuse to treat or to take such recompence as shall be offered by the surveyor; then the justices, at any general quarter sessions, upon certificate in writing (Q) signed by the justices who made such view, of their proceedings in the premisses, and on proof of 14 days' notice in writing having been given by the surveyor to the owner, occupier, or other person or body corporate interested

tereſted in ſuch ground, or to his or their guardian, truſtee, clerk, or agent, ſignifying an intention to apply to ſuch quarter ſeſſions for the purpoſes of taking ſuch ground, — ſhall impannel a jury out of the perſons returned to ſerve at ſuch ſeſſions: And the ſaid jury ſhall upon their oaths aſſeſs the damages to be given and recompence to be made to the owners and others intereſted in the ſaid grounds, as they ſhall think reaſonable, not exceeding 40 years' purchaſe for the clear yearly value of the ground; and likewiſe ſuch recompence as they ſhall think reaſonable, for making new ditches and fences on the ſide or ſides of the ſaid highways that ſhall be ſo enlarged or diverted; and alſo ſatisfaction to any perſon or body corporate that may be otherwiſe injured by the enlarging or diverting the ſaid highways reſpectively. *ſ.* 16.

And if the jury ſhall give a verdict for more money than was offered by the ſurveyor before the application to the ſeſſions; the coſts attending the ſeveral proceedings ſhall be paid by the ſurveyor, out of the money in his hands or by him to be levied: But if the jury ſhall give a verdict for no more, or for leſs than was offered by the ſurveyor, then the coſts ſhall be paid by the perſon or body corporate, who refuſed to accept the ſatisfaction ſo offered to him as aforeſaid. *ſ.* 18.

And on payment or tender of the money ſo to be awarded, or leaving it in the hands of the clerk of the peace if the party entitled to receive it cannot be found, or ſhall refuſe to accept it; the intereſt of ſuch perſon or body corporate in the ſaid ground ſhall be deveſted out of them, and the ſaid ground, after ſuch agreement or verdict as aforeſaid, ſhall be eſteemed and taken to be a public highway, to all intents and purpoſes. *ſ.* 16.

Saving nevertheleſs, to the owner of ſuch ground, all mines, minerals, and foſſils lying under the ſame, which may be got without breaking the ſurface; and alſo all timber and wood growing upon ſuch ground, to be cut down and taken by ſuch owner, within one month after ſuch order made; or in default thereof, to be cut down by the ſurveyor within the reſpective months aforeſaid, and laid upon the land adjoining for the benefit of the owner. *Id.*

Money to be raiſed for that purpoſe.

And where there is not ſufficient money in the hands of the ſurveyor, the ſaid two juſtices, in caſe of agreement, or the ſaid quarter ſeſſions after ſuch verdict as aforeſaid, ſhall order an equal aſſeſſment to be made and levied upon all and every the occupiers of lands, tenements, woods,

tithes, and hereditaments, in the pariſh, townſhip, or place where ſuch highway lies; and if not paid in ten days after demand, the ſame ſhall by order of the ſaid two juſtices or court of quarter ſeſſions reſpectively, be levied by the ſurveyor in the manner herein-after mentioned. Provided, that no ſuch aſſeſſment to be made in any one year ſhall exceed 6d. in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments ſo aſſeſſed. *ſ.* 16.

Old way may be ſtopped up and the land ſold, where a new way is made.

And when any ſuch new highway ſhall be made as aforeſaid, the old way ſhall be ſtopped up, and the land and ſoil thereof ſhall be ſold by the ſurveyor, with the approbation of the ſaid juſtices (R) to ſome perſon whoſe lands adjoin thereto, if he ſhall be willing to purchaſe the ſame; if not, to ſome other perſon, for the full value thereof. But if ſuch old road ſhall lead to any lands, houſe, or place, which cannot in the opinion of ſuch juſtices reſpectively be accommodated with a convenient way and paſſage from ſuch new highway; in ſuch caſe, the old highway ſhall only be ſold ſubject to the right of way and paſſage to ſuch lands, houſe, or place reſpectively. And the money ariſing by the ſale ſhall be applied towards the purchaſe of the land where ſuch new highway ſhall be made. And on payment or tender of the money, and on a certificate ſigned by the ſaid two juſtices, or by the chairman of the ſaid court of quarter ſeſſions reſpectively, deſcribing the lands ſo ſold, and expreſſing the ſum ſo agreed for, and directing to whom the ſame ſhall be paid; and on the purchaſer's taking a receipt for ſuch purchaſe money from the perſon entitled to receive the ſame, by an indorſement on the back of ſuch certificate, the ſoil of ſuch old highway ſhall become veſted in ſuch purchaſer and his heirs. But all mines, minerals, and foſſils, lying under the ſame, ſhall continue to be the property of the perſon who would have been entitled to the ſame, if ſuch old highway had continued there. *ſ.* 17.

Owner of the ground conſenting to the exchange of a road.

And moreover, when it ſhall appear, upon the view of two juſtices (S) that any public highway, not in the ſituation herein-before deſcribed, or public bridle way, or foot way, may be diverted, ſo as to make the ſame nearer or more commodious to the public, and the owner of the lands through which ſuch new highway, bridle way, or foot way is propoſed to be made, ſhall conſent thereto by writing (T) under his hand and ſeal; it ſhall be lawful, by order of the juſtices at ſome ſpecial ſeſſions, to divert and

and turn and to ſtop up ſuch foot way, and to divert, turn, and ſtop up and incloſe, ſell and diſpoſe of ſuch old highway or bridle way, and to purchaſe the ground and ſoil for ſuch new highway, bridle way, or foot way, by ſuch ways and means, and ſubject to ſuch exceptions and conditions in all reſpects, as herein-before mentioned with regard to highways to be widened or diverted. And where any ſuch highway, bridle way, or foot way, herein laſt-before deſcribed, ſhall be ſo ordered to be ſtopped up or incloſed, and ſuch new highway, bridle way, or foot way ſet out and appropriated in lieu thereof as aforeſaid; it ſhall be lawful for any perſon injured or aggrieved by any ſuch order or proceeding, or by the incloſure of any highway by virtue of an inquiſition taken upon a writ of *ad quod damnum*, to appeal to the next general quarter ſeſſions, on giving ten days' notice in writing to the ſurveyor and party intereſted in ſuch incloſure, if there be time for that purpoſe; if not, then to the next ſeſſions after. And if no ſuch appeal be made, or, being made, ſuch order and proceedings ſhall be confirmed, the new way ſhall be and continue a public highway, bridle way, or foot way, to all intents and purpoſes, and the ſoil thereof ſold in the manner and ſubject to the reſtrictions herein-before mentioned with reſpect to highways to be enlarged or diverted. But no incloſure or ſtoppage of ſuch old way ſhall be made, until the new way ſhall be completed, and ſo certified by two juſtices upon view; which certificate ſhall be returned to the clerk of the peace, and by him inrolled amongſt the records. *ſ.* 19.

Appeal to the next ſeſſions, on giving ten days' notice.] In the caſe of the *K.* v. juſtices of *Staffordſhire*, *M.* 37 *G.* 3. which was an application for a *mandamus* to receive an appeal againſt an order of two juſtices for turning a road; which was founded upon a ſuppoſition that the juſtices at the laſt ſeſſions were guilty of negligence in not receiving the appeal; but the appellant, not having given ten days' notice of appeal before the laſt ſeſſions, had no right to appeal. And he will not be prejudiced by this rule being diſcharged; becauſe if he had no notice of this proceeding until the laſt ſeſſions, the juſtices at the next ſeſſions will be bound to receive his appeal, on his giving the notice required by the ſtatutes. Rule diſcharged. *Durnf.* and *Eaſt*, 7 V. 81.

Highways having been turned above 12 months without an order.

And where any highway, bridle way, or foot way, hath been diverted and turned above 12 months, either from neceſſity,

neceſſity, or where the ſame hath been deſtroyed by floods or ſlips of the ground, or from other cauſes, if a new way hath been made in lieu thereof nearer or more commodious to the public, and the ſame hath been acquieſced in, and no ſuit or proſecution hath been commenced for the diverting or turning the ſame; ſuch new way ſhall from henceforth be the public way to all intents and purpoſes whatſoever. *ſ.* 19.

Hath been diverted and turned above 12 *months*] In the caſe of *Waite* v. *Smith* and another, *H.* 39 *G.* 3. which was an action of treſpaſs, tried before *Rocke* J. at *York* aſſizes, where a verdict was found for the defendants, ſubject to the opinion of the court on the following caſe: At the time of committing the treſpaſs the plaintiff was occupier of a cloſe called *Higher Butts*, as tenant to Mr. *Bagſhaw*. Previous to the year 1792 there was no common highway over the ſaid cloſe, and in that year the highway leading from *Barnoldſwick* to *Thornton* in the ſaid county was ſtopped by the *Leeds* canal being cut acroſs it, and a new road was then made by the canal company acroſs the ſaid cloſe, called *Higher Butts*, being then in the occupation of a different tenant, in the place of the highway ſo obſtructed. The old road was ſo ſtopped up, and the new road made by the canal company, without any order or authority from any juſtices, and without the conſent of Mr. *Bagſhaw* for that purpoſe. In *Sep.* 1792 Mr. *Bagſhaw* was in *Craven* where the roads lie, and then knew of the new road having been made; he left *Craven* a few days after and continued abſent till 1794. No complaint was made until he returned in 1794. No proſecution was commenced within a year after the road was ſo turned, the new road having been uſed by the publick in lieu of the old road until the time of committing the treſpaſs, and the new road is nearer and more commodious to the publick than the old road. At the time when the treſpaſs was committed, which was in the preſent year, the new road was ſtopped up by a gate and poſts ſet acroſs it; the defendants, who were ſervants to the canal company, pulled down the gates and poſts by which the road was obſtructed as aforeſaid. The queſtion was, Whether under theſe circumſtances the new road is or is not a publick highway? —— For the plaintive it was argued (*inter alia*) that the words in the above clauſe, "*hath been* diverted, &c. above 12 "months, if a new highway *hath been* made in lieu "thereof, nearer or more commodious to the publick,

"and

" and the ſame hath been acquieſced in, and no proſecution " commenced, &c. the new road ſhall from henceforth be " the publick way," appears clearly to have been intended retroſpective only.——On the other ſide it was contended, that the above ſection was intended to have both a retroſpective and proſpective operation, and that the legiſlature thought, that if a road had been turned over a man's ground for above 12 months without any complaint on his part, it was a fair ground to preſume that no injury was done to him, and that he had acquieſced in it.——L. *Kenyon* Ch. J. This caſe muſt depend on the true conſtruction of the general highway act, 13 *G.* 3. *c.* 78. of which that put upon it by the plaintiff's counſel is, I think, the true one; that a different conſtruction would be productive of groſs injuſtice is evident to every perſon who conſiders the ſubject, for if the defendant's conſtruction were to prevail, in every caſe of a minority, or of the abſence of the owner, and even in other caſes where the tenant choſe to acquieſce in a new road being uſed, or to collude with thoſe who uſed it, the uſing of it for a twelvemonth would be concluſive evidence of the right againſt the owner of the land though he had no means of preventing it, by bringing an action of treſpaſs, not being in poſſeſſion. The fair conſtruction is that inſiſted upon by the plaintiff; and without commenting minutely on all the words uſed in the different ſections, I think that the word "*henceforth*," is not capable of receiving any other conſtruction; if the words of the act were doubtful, and we were to conſider which of the two conſtructions would work the leaſt injuſtice, I ſhould not heſitate to adopt the plaintiff's conſtruction, ſtill leſs then ought we to heſitate, when by adopting the defendant's conſtruction we ſhould violate all the rules of grammar. I am therefore moſt clearly of opinion, that that part of 19 ſection which the defendant's counſel principally relied on is retroſpective.——*Groſe* J. This appears to me to be a moſt vexatious attempt on the part of the defendants to injure the plaintiff's right of property; and on conſidering attentively the different words uſed in the ſections of the act that have been pointed out, I am glad to find that it cannot be juſtified: the intention of the legiſlature is perfectly clear; they meant to give power to juſtices in certain caſes to divert roads in future, and to put an end to all further diſputes reſpecting thoſe that had been turned, even without authority, provided the new roads had been uſed and acquieſced in

for

for a twelvemonth before; but there was no reaſon why thoſe that ſhould be diverted without authority after the act paſſed ſhould be conſidered as legally diverted under the act, becauſe whenever it ſhould be thought by thoſe who are competent to decide upon the ſubject that another road may be nearer or more commodious to the publick, that act gives authority to two juſtices to divert it under certain circumſtances; all the expreſſions in the different ſections of the act are carefully uſed to expreſs that intention, and to mark the difference between the future and the paſt. The other judges concurred. *Poſtea* to the plaintiff. *Durnf.* and *Eaſt*, 8 V. 133.

Unneceſſary roads may be ſtopped up.

And if in any pariſh or place, where a highway ſhall be diverted and turned, it ſhall appear to the juſtices that there are *other* highways within ſuch pariſh or place, beſides that ſo to be diverted and turned, which may without inconvenience to the publick be diverted into ſuch new highway, or into any other within the ſame pariſh or place, and the charge of repairing the ſame may be thereby ſaved; the ſaid juſtices may order ſuch highway, which ſhall appear to them unneceſſary, to be ſtopped up, and the ſoil thereof ſold, in ſuch manner, and ſubject to ſuch reſtrictions, and ſuch right of appeal, as herein-before directed concerning highways to be ſtopped up or incloſed. 13 *G.* 3. *c.* 78. *ſ.* 22.

But in caſes only where a new road is ſet out.

M. 23 *G.* 3. *Page* eſq. v. *Howard.* This was an action of treſpaſs; the defendant pleaded the general iſſue: The cauſe was tried before L. *Mansfield* at the *Surrey* aſſizes, when a verdict was found for the plaintiff, ſubject to the opinion of the court upon the following caſe: In 1774 a road in the pariſh of *Cobham* in *Surrey* leading towards *Ockham* in the ſaid county, was lawfully diverted and turned by an order of two juſtices, by virtue of 13 *G.* 3. *c.* 78. *ſ.* 19. In *June* 1782, another road (the place where the ſaid treſpaſs was committed) in the ſaid pariſh of *Cobham* leading towards *Ockham*, and alſo towards *Chertſey Byfleet*, and other places, was ſtopped up by an order of one of the ſaid juſtices and another juſtice of the ſaid county, under the powers given by *ſ.* 22. of the ſaid act, and a gate was erected and locked up by the plaintiff acroſs the road ſo ſtopped in 1782; and the defendant broke down the ſame.——*Quere*, Whether the juſtices under the ſaid act, *ſ.* 22. had a power to make the ſaid order for ſtopping the road where the ſaid treſpaſs was committed? If they had, the verdict to ſtand: if not, to be entered for the defendant. *Bond*, *G.* for the plaintiff, con-

contended, that the legiſlature meant to give an original juriſdiction to the magiſtrates who acted under ſ. 22; that the power thereby given was a ſubſtantive power, and independent of the former clauſe; that if it muſt be the act of the ſame magiſtrates, it muſt be done at the ſame time alſo; and if it is taken to be at the ſame time, it would in its conſequences be abſurd; for at the time of diverting the roads it may not be poſſible to foreſee what roads it may be neceſſary to ſtop up; and that by the expreſs terms of the prior clauſe it is only where a road has firſt been diverted, that any authority is given to ſtop them. *Rous* for the defendant inſiſted, that the power given by the latter clauſe was not ſubſtantive, but merely auxiliary of the former; that it muſt be exerciſed at the ſame time, and by the ſame juſtices, and not at any diſtance of time by others; that the words were more doubtful; the analogy from the courſe of proceeding under the act afforded ſo clear an illuſtration of the ſenſe of the legiſlature, as to remove every thing like difficulty upon the queſtion; that the act directs, that the money ariſing from the ſale of the road ſtopped up, ſhall be applied to purchaſe the land where the new highway ſhall be made; that this was now impoſſible; that it did not appear that there was here any new road to be purchaſed; that if a new ſet of magiſtrates might now, at the end of 8 years, interfere, they might at the end of 800; that the ſubſequent clauſe therefore was plainly referable to the prior; and that the powers which it gave could be exerciſed by thoſe only who inforced the former.——L. *Mansfield:* However we may agree, that it might have been better if the neceſſary remedy had been extended to both caſes, yet upon looking into the act of parliament, we think we cannot be warranted in putting ſuch a conſtruction. This is not a general power, but tied up to a particular caſe. The power to ſhut up roads is given only where there is a new road to be ſet out. This ſhews, that it was meant to be one intire act of the magiſtrates; that the two clauſes make one proviſion, and that the powers under them were to make but one tranſaction; the clauſes are ſo connected, that they cannot be ſeparated. The other judges concurring, *poſtea* to defendant. *Cald. Caſ.* 228.

Common lands lying near a road to be ſtopped up.

Provided, that no *common* land, lying between the fences of any old highway to be ſtopped up or incloſed by virtue of this act, ſhall be incloſed. And where the ſame, not being common land, ſhall upon a medium exceed 30 feet in breadth, and not extend to 50 feet, the ſame ſhall not

not be ſtopped up or incloſed, until ſatisfaction be made to the owner for ſo much as ſhall exceed the breadth of 30 feet; and if the parties cannot agree, the ſame ſhall be adjuſted by the ſaid juſtices, or the jury, if a jury be impannelled: And if it ſhall exceed 50 feet in breadth, or if the old road be through the open field or ground belonging to any particular perſon; ſuch perſon, and alſo the perſon or perſons entitled to the land between the fences on the ſide of ſuch highway, ſhall reſpectively hold and enjoy the land and ſoil of ſuch old highway, and pay to the ſurveyor ſo much as ſhall be agreed on, or if they cannot agree, then ſo much as ſhall be adjudged by the ſaid juſtices or jury, if a jury be impannelled, to be adequate to the purchaſe, eſtimating ſuch highway at 30 feet in breadth upon an average. *ſ.* 20.

Foot way diverted.

And where any foot way ſhall be diverted through the land belonging to the ſame perſon who owned the land through which ſuch old foot way lay, the ſame ſhall be deemed an exchange only; and no ſatisfaction ſhall be made, unleſs the land for the new foot way be of greater length and of greater value than the land uſed for the old foot way. And where the foot way ſhall not be turned through the lands belonging to the ſame perſon, the damage which had been occaſioned by the old foot way to the lands through which it lay, if the parties intereſted ſhall not agree in adjuſting the ſame, ſhall be adjudged by two indifferent perſons, one to be named by the owner of the land, and the other by the ſaid two juſtices; and if the perſons ſo to be nominated cannot agree therein, they ſhall chuſe ſome third perſon to adjudge the ſame, whoſe determination ſhall be final. And the money at which ſuch damages ſhall be aſſeſſed, ſhall be applied in making ſatisfaction to the owner of the land through which ſuch new foot way ſhall be made. *ſ.* 21.

XII. Aſſeſſments how to be made.

Aſſeſſment for ſpecial purpoſes.

For reimburſing expences for purchaſing materials, and making ſatisfaction for damages in getting and carrying the ſame away;—erecting guide poſts, or other poſts or ſtones;—making and repairing trunks, tunnels, plats, bridges, and arches;—for damages done to lands by making new ditches and drains;—and for the ſalary to be paid by the pariſh, townſhip, or place to the ſurveyor: Upon application by the ſurveyor to the juſtices at a ſpecial ſeſſions, and oath made of the ſums he hath *bona fide*

ſide laid out, or which will be required for the purpoſes aforeſaid; the ſaid juſtices, or two of them, ſhall by their warrant cauſe an equal aſſeſſment to be made upon all occupiers of lands, tenements, woods, tithes, and hereditaments; to be made and collected by ſuch perſon or perſons, and allowed in ſuch manner as the ſaid juſtices by their order at ſuch ſeſſions ſhall appoint: and to be levied as is herein-after directed. 13 *G.* 3. *c.* 78. *ſ.* 30.

Provided, that no ſuch aſſeſſment for thoſe or any of thoſe purpoſes, in any one year, ſhall exceed the rate of 6 d. in the pound. *Id.*

General aſſeſſment.

If upon application of the ſurveyor to the juſtices at their general or quarter ſeſſions, or at a ſpecial ſeſſions for the highways, the ſaid juſtices ſhall be fully ſatisfied by proof upon oath that the duty hath been performed, and the money applied according to the directions of this act; or ſhall be fully ſatisfied, that the common highways, bridges, cauſeways, ſtreets, or pavements, belonging to any pariſh, townſhip, or place, are ſo far out of order, that they cannot be ſufficiently amended and ſupported by the means herein-before preſcribed (notice being firſt given (U) of ſuch intended application at the church or chapel on ſome *Sunday* preceding ſuch quarter or ſpecial ſeſſions; or, if the place be extraparochial, notice in writing being firſt given of ſuch intended application, to ſome of the principal inhabitants reſiding in ſuch extraparochial place, a week at leaſt before ſuch general or ſpecial ſeſſions);—in ſuch caſe, an equal aſſeſſment upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within any ſuch pariſh, townſhip, or place, for the ſaid purpoſes, may be made and collected by ſuch perſon, and allowed in ſuch manner as the ſaid juſtices by their order (V) at ſuch general or ſpecial ſeſſions ſhall direct. *ſ.* 45.

The whole not to exceed 9 d. per pound.

Provided, that the ſaid aſſeſſment, and the aſſeſſment herein-before authorized for buying materials, making ſatisfaction for damages, erecting guide poſts, and paying the ſurveyor's ſalary, ſhall not together in any one year exceed the rate of 9 d. in the pound. *ſ.* 46.

XIII. Penalty of hindring the execution.

If any perſon ſhall reſiſt or make forcible oppoſition againſt any perſon employed in the execution of this act, or make any reſcue of the goods diſtrained; or if any conſtable ſhall refuſe or neglect to execute or obey any

warrant of a juſtice, he ſhall, on conviction before one juſtice, forfeit not exceeding 10l. nor leſs than 40s. to be paid to the ſurveyor for the repair of the highways: If not forthwith paid, or ſecured to be paid upon conviction, the juſtice ſhall commit him to the common gaol or houſe of correction for any time not exceeding 3 months, unleſs the foreiture be ſooner paid. *ſ.* 71.

XIV. Penalty of the ſurveyor for neglect of duty.

If any ſurveyor, after his acceptance of the office, ſhall neglect his duty in any thing required of him, for which no particular penalty is impoſed, he ſhall forfeit not exceeding 5l. nor leſs than 10s. at the diſcretion of the juſtice or juſtices having juriſdiction therein. 13 G. 3. *c.* 78. *ſ.* 50.

XV. Surveyor's account.

To collect the aſſeſſments. The ſurveyor ſhall diligently collect the ſeveral aſſeſſments, forfeitures, penalties, ſums of money and compoſitions, within the year for which he is appointed ſurveyor:

To keep a book. And ſhall keep a book, in which he ſhall enter a juſt and true account of all ſuch money as ſhall have come to his hands, or to the hands of the ſaid aſſiſtant, and to whom, and on what occaſion, he hath paid or applied the ſame:

And ſhall alſo enter in ſuch book a liſt of all ſuch ſums of money as ſhall then remain due and owing from any perſon or perſons, in reſpect of the payments, compoſitions, aſſeſſments, penalties, or forfeitures:

And alſo an account of all tools, materials, implements, and other things provided by order of the inhabitants, at a veſtry or other public meeting, for the repair of the highways, at the public expence of ſuch pariſh, townſhip, or place:

And ſhall produce the book and the aſſeſſments made in that year, to the inhabitants at a veſtry or other publick meeting to be held for that purpoſe, within 15 days before the ſpecial ſeſſions to be holden in the week next after *Michaelmas* quarter ſeſſions; to the intent that the ſaid accounts, aſſeſſments, and liſts may be inſpected by the ſaid inhabitants:

To verify his accounts upon oath. And after the ſaid book and aſſeſſments ſhall have been produced at ſuch meeting, he ſhall take the ſame to a juſtice

tice on ſuch day and at ſuch hour as ſhall be agreed upon at ſuch meeting before ſuch laſt-mentioned ſpecial ſeſſions; and then and there verify ſuch account, or any part thereof, upon oath (W), if required:

May be allowed by one juſtice, or poſtponed to the ſeſſions.

And ſuch juſtice may allow ſuch account (X) if he finds it juſt, or poſtpone it until ſuch ſpecial ſeſſions, if he finds cauſe for ſo doing, in which caſe it may be ſettled and allowed at ſuch ſpecial ſeſſions, after the parts objected to by ſuch juſtice ſhall have been explained and verified by proper evidence, to the ſatisfaction of the juſtices at ſuch ſpecial ſeſſions; and in caſe any articles contained in ſuch accounts ſhall not be explained, and proved to the ſatisfaction of ſuch juſtices, they may diſallow the ſame:

In the caſe of *K.* v. juſtices of *Weſt Riding of Yorkſhire* (*a*) it was determined that no appeal lies to the quarter ſeſſions againſt the allowance of the accounts of the ſurveyor at the ſpecial ſeſſions. *Durnf.* & *Eaſt*, 5 V. 629.

Clerks' fee.

And for the account examined and taken, and oath adminiſtred, the juſtices' clerks ſhall have the ſum of 1 s. and no more. 13 *G.* 3. *c.* 78. *ſ.* 48.

Book to be delivered to a churchwarden or overſeer, and a duplicate thereof to the ſucceeding ſurveyor.

And when the ſaid accounts ſhall have been ſo ſettled and allowed, or diſallowed as aforeſaid; the ſaid book and aſſeſſments ſhall be tranſmitted to a churchwarden or overſeer of the poor of ſuch pariſh, townſhip, or place, or if the place be extraparochial, then to ſome principal inhabitant thereof; to be kept for the uſe of ſuch pariſh, townſhip, or place: And the ſaid ſurveyor ſhall alſo forthwith deliver a duplicate of ſuch book and account, together with all ſums of money that ſhall remain in his hands, and likewiſe all tools, materials, implements, and other things as aforeſaid to the ſucceeding ſurveyor, if any ſhall be appointed; or retain the ſame in his hands, and account for them in his next account, if he ſhall be continued ſurveyor in the ſucceeding year. *Id.*

Succeeding ſurveyor may collect arrears.

And the ſucceeding ſurveyor may recover, collect, and receive all ſums of money due and owing as aforeſaid, as the preceding ſurveyor could or ought to have done. *Id.*

Surveyor neglecting his duty.

And if ſuch ſurveyor ſhall neglect to provide ſuch book, or to enter ſuch accounts and liſts therein; or to deliver the ſaid book and ſuch duplicate thereof, and ſuch aſſeſſments, tools, materials, implements, and other things, in

(*a*) See this caſe more at large, title *Appeal*, under this head.

the

the manner aforesaid, he shall forfeit not exceeding 5l. nor less than 40s. And if he shall make default in paying or accounting for the money remaining in his hands, within the time, and according to the directions aforesaid, he shall forfeit double the money which shall be adjudged by the said justices to be in his hands. 13 *G.* 3. *c.* 78. *s.* 48.

Surveyor dying.

If the surveyor shall die before such accounts and list be made out, or such money, book, assessments, tools, materials, and implements shall be so delivered and paid; his executors or administrators shall make out, pay, and deliver the same, in like manner, and under the like penalty, as the surveyor was liable and subject to. *Id.*

XVI. Presentment or indictment of highways in general (Y).

All defects of repairs of highways shall be presented in the county where they lie, and not elsewhere.

Parish lying in two counties.

If a parish lies in two distinct counties, an indictment may be brought against that part of the parish in which the ruinous road lies. And it is said, that this is the only proper method. For an indictment against the whole parish, found in one of the counties, cannot be inforced; for one county hath no jurisdiction over the inhabitants of a distinct county. *Bur. Mansf.* 2507.

But notwithstanding the above, in the case of *K.* v. the inhabitants of that part of the parish of *Clifton* which lies in the county of *Gloucester*, *H.* 34 *G.* 3. it was determined; That where a parish is situate part in one county and the rest in another, and a highway lying in one part be out of repair; an indictment against the inhabitants of *that part only* is bad, and must be against the whole parish. *Durnf.* and *East*, 5 V. 498 (*a*).

Must shew it to be a highway.

And the indictment must shew, that the way is common to all the king's people; for which cause, it hath been resolved, that an indictment for a nusance to a horseway, without adding that it is a highway, is naught. 1 *Haw.* 220.

But it is not necessary to say it is a highway for this or that particular carriage; for if it is a common highway,

---

(*a*) The judges gave their opinions in this case at considerable length. L. *Kenyon* Ch. J. and J^s. *Buller* and *Grose* were for quashing the indictment, and *Ashhurst* J. for supporting it.

it

it is a highway for all manner of things. *Cases in the time of L. Hardwicke*, 316.

Need not be shewn *when* it became a highway.

In the case of *Aspindall* against *Brown*, *E.* 29 *G.* 3. the court held, that in indictments for nusances in a highway, it is not necessary to state the highway to have been such *from time immemorial*, as great inconveniences would follow if it were otherwise; for strangers passing along the streets of *London* could not ascertain when they first became highways. *Durnf.* and *East*, 3 V. 265.

How far necessary to shew the places from and to which it leads.

It is safest in the indictment to shew both the place from which, and also the place to which the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been disallowed: However it seems certain, that there is no necessity to shew that a highway leads to a market town, because every highway leads from town to town. 1 *Haw.* 219.

H. 30 *G.* 3. *Rouse* v. *Bardin* and others. This was an action of trespass for breaking and entering the plaintiff's close called *Brompton Heath*. The defendant pleaded in justification a right of way as follows—"That from time whereof the memory of man is not to the contrary, there hath been a *public common highway* for all the liege subjects, &c. to pass and re-pass on foot, from a certain other *common and public king's highway leading from* Knightsbridge *in the county of* Middlesex, *unto a certain place called* Earl's Court, *in the parish of* Kensington *in the said county, in, through, over, and along, the said close, called* Brompton Heath, *&c. unto a certain other common and public king's highway, leading from* London *to* Fulham *in the said county, and back again from the said last mentioned close, in which, &c. to the said first mentioned king's highway, at all times of the year, at their will and pleasure, &c.* The evidence at the trial was, that the way in dispute led over *Brompton Heath into a footway* called the *Church-lane*, at the west side, and *along that footway, into the road leading from* London *to* Fulham.——L. *Loughborough*, who tried the cause, thought the plea was not supported by the evidence, inasmuch as there was a variance with respect to the *terminus ad quem*, and directed the jury to find a verdict for the plaintiff; which was accordingly done. In the last term a rule was granted to shew cause why there should not be a new trial, against which *Bond* and *Marshel*, Serjeants, shewed cause. And *Adair* and *Runnington*, Serjeants, contra.——After hearing the arguments on both sides, the judges delivered their opinions as follows.—*Gould* J. This case arises on pleadings of considerable length, stating

that the treſpaſs was committed in a place called *Brompton-Heath*. The defendants ſay, that from time whereof the memory of man is not to the contrary, there has been a common public highway, for all the liege ſubjects of this kingdom, to paſs and re-paſs on foot, from a certain other common public highway leading from *Knightſbridge* to *Earl's Court*, in, through, over and upon the ſaid cloſe called *Brompton Heath*, unto a certain other common highway leading from *London* to *Fulham*, and back again, in, through, and over the *locus in quo*. I underſtand that at the end of this cloſe leading towards the *Fulham* road, that is, in the line of the way, you do not immediately iſſue into what is called the *Fulham* road, but into another common highway called the *Church-lane*, and from thence over a very ſhort ſpace, you enter into that which is properly called the *Fulham* road. Now my apprehenſion always has been, that in caſes of this ſort, the intermediate ſpaces, either before the entrance into a field, or at the exit out of it before you reach the *terminus ad quem*, are immaterial. This is the caſe of a common public highway, and there have been very conſiderable doubts, whether in a common highway, any *termini* at all need be ſet forth. There was a caſe mentioned at the bar, of an indictment for ſtopping a highway at *Kenſington*, in which it was holden, that the way was ſufficiently deſcribed, without ſtating from what place to what place it led; and among other things, a reaſon was given for that opinion, becauſe a highway runs from the ſea acroſs the whole iſland. But nevertheleſs, if a defendant will ſtate the *termini* in his juſtification, he is bound to prove them. There are many inſtances, which muſt occur to every one, where things are not neceſſary to be alledged in pleading, yet if they be alledged, they muſt be proved. Such as the deſcription of a public act of parliament; the day when the ſeſſions was holden; and the like. The queſtion then in the preſent caſe is, What the terms of this plea require to be proved, and whether they neceſſarily import that the way in diſpute was adjoining to the *Fulham* road? Now that is not the caſe; the way is deſcribed to go *in*, *through*, *over*, and *along Brompton-Heath*, *unto* the *Fulham* road. But there is an intervening ſpace between that and the *Fulham* road. If it had been deſcribed to be *adjoining* to the *Fulham* road, I have already given my opinion as to the proof. But it is ſtated to lead *unto* the *Fulham* road; which, in my apprehenſion, is nothing more than this, a common highway,

which

which is one entire thing, leads over this field to the *Fulham* road; and so it does, notwithstanding there is an intervening piece of ground. The case cited at the bar from *Ventris* comprehends this idea. It is there said to be sufficient to state the places from which and to which the way leads, though the mesne passage should be mistaken. It will be material to advert to antient pleadings in justification. I find in *Bastall's Entries*, 617. a right of way pleaded as follows: A man was seised of a messuage in *S.* and prescribed for a way for all those whose estate, *&c.* both for horse and foot, "*from the messuage to the parish church of E. and the market town of M.* with all his carriages *ultra clausum prædictum*." Now it would be productive of infinite uncertainty, to require an exact description of the line of the way, to say that it went so many yards to the north, then turn to the west, and then to the east, in that irregular manner. Such justifications as these would then be clogged with insuperable difficulties in point of proof. And I think it would be totally unnecessary; the usage defines the way. I mention this as occurring to me from the books and pleadings; and with regard to experience, I have always understood that the intermediate spaces are disregarded, both as to the approach to a field and the quitting it. It is sufficient to answer the trespass, and justify under a right to pass over the close. I therefore think this is not a material variance from the plea.——*Wilson* J. I am of the same opinion. Where the way is a public highway, it is no sort necessary to state either the *terminus à quo*, or the *terminus ad quem*; where it is a private way, it is necessary to state them, because private ways are given for particular purposes, and the justification must shew that they were used for those purposes. But it is different with regard to a publick highway, because all his majesty's subjects have a right to use that way, for all purposes, and at all times. The reason given in the ancient cases, why a highway must be particularly described, is not a very good one, namely, that it must be stated to lead to a market town, in order to shew that it is a highway. L. *Hale* says, whether it be a highway or not depends much on reputation. I am therefore of opinion, that in justifying a trespass because the place in question is a highway, it is not necessary to state the places to which and from which it leads. If that be so, the next question is, Whether those places being stated in the plea, they are sufficiently proved? With respect to that, the way in dispute is stated to be a highway leading from one highway to another highway.

I think it cannot be doubted but that this is a ſufficient deſcription. But it is impoſſible to ſtate the ſpecific line of the road under that deſcription, which can only be, that it leads from one point to another. What the line is on which the highway paſſes muſt be a matter of evidence. The objection in this caſe is, that the way is ſtated to lead to the *Fulham* road, but that before it reaches the *Fulham* road, it goes for a little ſpace on another highway. But I do not conceive that to be a material variance. I underſtand the allegation to import no more than this; namely, that there is a highway over the cloſe, on which you may go from the *Fulham* road to the *Kenſington* road, but not that the *Fulham* road joins to the cloſe over which the highway leads. But even if that were the import of the allegation, I ſhould have conſiderable doubts whether this were a variance. But clearly the allegation means no more than this; there is a highway over the cloſe, leading from the *Fulham* road to the *Kenſington* road, which I think was ſufficiently proved by the evidence.——— L. *Loughborough* Ch. J. My brother *Heath* has informed me, that he is of the ſame opinion with my brothers *Gould* and *Wilſon*. I therefore certainly feel that the authority of the court ought to govern my opinion. But on the beſt conſideration I have given the queſtion, I have not been able to bring myſelf to agree with them. I ſtill retain the opinion I firſt had at the trial, and think, that in all caſes, where a real difference in opinion exiſts, it is right to avow it, and ſtate the grounds on which we differ. What weighs with me in the preſent caſe, is the poſitive authority of 2 *Rolle's Abridgement*, 81. in which it is ſaid, that in an indictment for an obſtruction, or nuſance near a highway, it is neceſſary to ſet out the *terminus à quo* and the *terminus ad quem*; a caſe in 15 *C.* 1. is referred to, where an indictment was quaſhed for this reaſon, which was ſaid to be a common exception, and divers indictments have been quaſhed on the ſame account. Againſt that authority, a caſe in *Latch*, 183. and ſome ſubſequent caſes were cited. But that caſe in my apprehenſion tends rather to confirm than weaken the authority of *Rolle's Abridgment*; for it ſhews that a much nicer objection was allowed by all the court. It was ſtated in the indictment, that at *Kenſington* the defendant obſtructed the king's highway from *London* to *Kenſington*, and the court two ſeveral times held this to be bad, becauſe they ſaid, the manner of deſcribing the way excluded *Kenſington*. The indictment was then drawn in a third form, and the way deſcribed to be, the

king's

king's highway in *Kenſington*; this was holden to be ſufficient, firſt by *Jones*, and afterwards by *Doderidge* and *Whitlock*, and the reaſon given is, becauſe a highway leads from the ſea through all *England*. But that reaſon I do not conceive to be a fair one: the obvious reaſon is, that a highway ſtated to be in a town is ſufficiently certain. And in that caſe *Jones* diſtinguiſhes a common way, in which the *termini* muſt be ſet out, from *alta via regia*. The caſe in 3 *Keble*, 89. is not applicable to the preſent; it was of a preſentment on a view by a jury, on an annoyance in a cloth fair, which the court after verdict held good. I think the caſe in *Andrews*, 137. before L. Ch. J. *Lee* was rightly determined on its own grounds. One queſtion there was, Whether the deſcription of the river *Thames* at *Fulham* was ſufficient without ſtating the places to which and from which it flowed? But it would be abſurd to enquire abuttals of navigable rivers; in that caſe it was holden ſufficient to ſay the river *Thames* at *Fulham*; and both *Probyn* and *Chapple* ſay, it was not neceſſary to ſet out the *termini*, for the court would take notice of the river *Thames*. But admitting that in an indictment for a nuſance in not repairing, it was ſufficient to ſtate a highway generally, yet it ſeems to me that the ſame rule is not to be applied to a plea in bar of an action of treſpaſs; becauſe every man has *prima facie* a right to exclude all others from coming over his land, and the juſtification muſt be ſet out with due certainty, and notice to the plaintiff of the way claimed over his ſoil. There may be many ways claimed, and the occupier of the field ought to know which is inſiſted upon; he may admit one, and deny the other; he has a right to reply *extra viam*, which he cannot do unleſs the way is explained with defining the term where it commences and ends. In the caſe before the court, the plaintiff might have admitted the road to the *Church lane*; he is deceived by the plea, for he knows there is no road over his field which directly terminates in the *Fulham* road. But whether the defendant was or was not obliged to deſcribe the way ſo particularly, he has undertaken to it, and has not done it truly; a way terminating in the *Church-lane*, and a way terminating in the *Fulham* road, are not only diſtinct, but it is phyſically impoſſible they can be the ſame. If the road were a line drawn from the *Knightſbridge* to the *Fulham* road, the line actually taken into the *Church-lane* muſt of neceſſity be *extra viam*, and ſo *vice verſa*. To ſtate generally a right to croſs a field without any given direction, ſeems to me ſo uncertain, that

it is impoſſible to meet it with preciſion, either in a replication, or on traverſe of the plea. Rule abſolute. *Caſ.* by *H. Black.* 351.

H. 30 *G.* 3. *K.* v. inhabitants of *Gamlingay.* This was an indictment againſt the pariſh of *Gamlingay* of a highway leading *from* the pariſh of *Hatley St. George towards and unto* the pariſh of *Gamlingay*, both in *Cambridgeſhire*, which was determined to be bad; for the road is deſcribed as leading *from Hatley unto Gamlingay*, which excludes *Gamlingay.* *Durnf.* and *Eaſt* 3 V. 514.

Place where.

It is neceſſary in the indictment expreſsly to ſhew in what place the nuſance complained of was done; for which cauſe an indictment for ſtopping a way at *D.* leading from *D.* to *C.* is not good, for it is impoſſible that a way leading from *D.* ſhould be in *D.* and no other place is mentioned. 1 *Haw.* 219.

Need not name the inhabitants.

It is ſaid, that a preſentment that a highway in ſuch a place is decayed, by the defaults of the inhabitants of ſuch a town, is good, without naming any perſon in certainty. 1 *Haw.* 220.

Indictment againſt particular perſons.

But it hath been adjudged, that an indictment againſt particular perſons muſt ſpecially charge them every one. 1 *Haw.* 220.

Muſt ſet forth how much is out of repair.

It ought alſo certainly to ſhew, to what part of the highway the nuſance did extend; as by ſhewing how many foot in breadth it contained, or otherwiſe the defendant will never know the certainty of the charge againſt which he is to make his defence, neither will the court be able from the record to judge of the greatneſs of the offence, in order to aſſeſs a fine anſwerable thereunto; and it hath been reſolved, that the place is not ſufficiently aſcertained by ſhewing, that it contained ſo many foot in length, and ſo many in breadth, by *eſtimation.* *Id.*

Muſt ſet forth the fact clearly.

Alſo, the fact muſt be expreſſed in ſuch proper terms, that it may clearly appear to the court to have been a nuſance; and for this cauſe it hath been reſolved, that a preſentment for *diverting* a highway is not good, becauſe a highway cannot be diverted, but muſt always continue in the ſame place where it was, howſoever it may be *obſtructed*, and a new way made in another place. *Id.*

Perſons indicted to have notice.

It ſeems to be implied in the conſtruction of all penal ſtatutes, that no one ought to be convicted of any offence againſt them without having notice of the accuſation made againſt him, and an opportunity of defending himſelf. And therefore it ſeems certain, that generally no one ought to be puniſhed for any of the abovementioned offences, without

without being called upon to anſwer for himſelf, and having liberty to traverſe the matters alledged againſt him. 1 *Haw.* 219.

Upon an indictment againſt a pariſh for not repairing, they can gave nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be againſt a particular perſon, he may give evidence that others ought to repair it. 1 *Mod.* 112. *Comb.* 396. Plea.

And the defendants ought not to plead that they ought not to repair, without ſhewing who ought. 1 *Haw.* 220.

And Mr. *Hawkins* ſays, that if a particular perſon be bound to repair a highway, either by incloſure or by preſcription, the pariſh cannot take advantage of it upon the plea of not guilty, but ought to ſet forth their diſcharge in a ſpecial plea. 1 *Haw.* 203.

And it is no excuſe for the inhabitants of a pariſh, being indicted at common law, for not repairing the highways, that they have done all that is required of them by ſtatute; for ſince theſe ſtatutes are only in the affirmative, and made in aid of the common law, and to ſupply the defects thereof, they ſhall not be conſtrued to abrogate any proviſion thereby made for theſe purpoſes. 1 *Haw.* 204. So that at all events the pariſh may be compelled to make their ways good.

After conviction, or upon demurrer, or confeſſion, any one may take exceptions to ſuch indictment or preſentment in any court for the want of legal form; but the court in diſcretion will very rarely ſuffer a man to take ſuch exceptions, before ſuch conviction or confeſſion, without a certificate and affidavit that the ways are in good repair. 1 *Haw.* 219. Exceptions.

And the defendants ſhall not be diſcharged by ſubmitting to a fine, but a *diſtringas* ſhall go *in infinitum* till they repair. 1 *Haw.* 220. Fine.

If the inhabitants of any pariſh, townſhip, or place, ſhall agree at a veſtry or other public meeting, to proſecute any perſon by indictment for not repairing any highway within ſuch pariſh, townſhip, or place, which they apprehend ſuch perſon was obliged to by law, or for committing any nuſance upon any highway; or ſhall agree at ſuch veſtry meeting to defend any indictment or preſentment againſt them; the ſurveyor may charge in his account the reaſonable expences thereof, after the ſame ſhall have been agreed to by ſuch inhabitants at a veſtry or public meeting, Inhabitants at a meeting may agree to proſecute an indictment.

or allowed by a juſtice within the limit where ſuch highway ſhall be. 13 G. 3. c. 78. ſ. 65.

Meeting for the like purpoſes, how to be aſcertained.

And in all caſes where a veſtry or other public meeting of the inhabitants of any pariſh, townſhip, or place, is directed by this act; publick notice ſhall be given of the day, hour, and place of holding the ſame, at the church or chapel on the *Sunday* next before; and alſo notice thereof in writing (a) ſpecifying the purpoſe of ſuch meeting, ſhall be fixed at the ſame time upon the door of ſuch church or chapel; and the ſame ſhall not be held till three days at leaſt after ſuch notice given. And if there be no church or chapel, the like notice ſhall be given in writing, and put up at the moſt publick place therein, 3 days at leaſt before ſuch meeting. ſ. 66.

Coſts on an indictment.

The court before whom any indictment or preſentment ſhall be tried for not repairing highways may award coſts to the proſecutor, to be paid by the perſon indicted or preſented, if it ſhall appear that the defence was frivolous; or coſts to the perſon indicted or preſented, to be paid by the proſecutor, if it ſhall appear that the proſecution was vexatious. ſ. 64.

That the defence was frivolous] T. 35 G. 3. *K.* v. *Cliſton.* The defendants were indicted for not repairing a road; on the trial before *Buller* J. they were convicted, and he certified on the back of the record, that the ſentence was frivolous, without alſo awarding coſts in expreſs terms. But the court were clearly of opinion, that there was no preciſe form of words to be uſed, and that this certificate was in effect an awarding of the coſts. *Durnf.* and *Eaſt*, 6 V. 344.

That the proſecution was vexatious] E. 33 G. 3. *K.* v. *Chadderſton.* An indictment for not repairing a high road having been removed by *certiorari*, it went down for trial to the aſſizes, when the defendants were acquitted for want of proſecution.——*Wood* moved for a rule on the proſecutor to compel him to pay the defendants their coſts, on the ground that this was a *vexatious* proſecution under the above act of 13 G. 3. c. 74.——But *per curiam:* The ſtatute only gives the court, *before whom the indictment is tried*, power to award coſts. An application ſhould therefore have been made to the judge at *niſi prius* who might have awarded coſts to the defendants, but we have no ſuch power. In the caſe alluded to, although the court above thought that the ſtatute of *W.* 3. was imperative on the judge at *niſi prius* to certify, they did not think that they had

had any authority to grant the certificate themſelves. Rule refuſed. *Durnf.* and *Eaſt*, 5 V. 272.

XVII. Preſentmeut by a juſtice.

Every juſtice of aſſize, juſtices of the counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, and of the Great Seſſions in *Wales*, ſhall have authority upon their own view, and every juſtice of the peace either upon his own view or upon information on oath given to him by the ſurveyor, to make preſentment (b) at their reſpective aſſizes or Great Seſſions, or in the open general quarter ſeſſions of the peace, of any highway, cauſeway, or bridge, not well and ſufficiently repaired and amended, or of any other default or offence committed and done contrary to the proviſion and intent of this ſtatute: Juſtices may preſent on their own view.

And all defects in the repair thereof ſhall be preſented in the juriſdiction where the ſame do lie, and not elſewhere:

And every ſuch preſentment ſhall be as effectual, as if found by the oaths of twelve men:

Saving to every perſon affected by ſuch preſentment his lawful traverſe for the ſame, as well with reſpect to the fact of non-repair as to the duty or obligation of repairing the ſaid highways, as they might have had upon any indictment of the ſame preſented and found by a grand jury: May be traverſed.

And the juſtices at their general quarter ſeſſions, or the major part of them, may, if they ſee juſt cauſe, direct the proſecution on ſuch preſentment as ſhall be made at the quarter ſeſſions, to be carried on at the general expence of ſuch limit, and to be paid out of the general rates within the ſame: Seſſions may order the proſecution to be carried on at the expence of the diviſion.

And for every ſuch default ſo preſented, the juſtices of aſſize, counties palatine, and Great Seſſions, and juſtices of the peace at their reſpective courts, may aſſeſs ſuch fines as they ſhall think meet:

And no ſuch preſentment, nor any *indictment* for any ſuch default or offence, ſhall be removed by *certiorari* or otherwiſe, out of ſuch juriſdiction, till the ſame be traverſed, and judgment thereupon given; except where the duty or obligation of repairing may come in queſtion. 13 *G.* 3. *c.* 78. *ſ.* 24. Certiorari.

In the caſe of *K.* v. *Kettleworth*, *M.* 33 *G.* 3. it was determined; that where a juſtice of peace *indicts* a road for being out of repair (the indictment being afterwards removed

moved by *certiorari*) he is intitled to coſts under the 5 & 6 *W. & M. c.* 11. *ſ.* 3. if the defendant be convicted. *Durnf.* and *Eaſt*, 5 V. 33.

XVIII. Levying of aſſeſſments, fines, and forfeitures

Levying of aſſeſſments.

If any perſon ſhall refuſe or neglect to pay the ſum aſſeſſed upon him by any aſſeſſment in purſuance of this act, within ten days after demand thereof made; the ſame ſhall be levied by the ſurveyor or any other perſon, by warrant of one juſtice by diſtreſs (c), and in default of diſtreſs, the juſtice may commit him (g) to the common gaol, there to remain until he ſhall have paid the ſum ſo aſſeſſed, and the coſts and charges occaſioned by ſuch neglect or refuſal. 13 *G.* 3. *c.* 78. *ſ.* 67.

And the ſurveyor may in all caſes be a witneſs, notwithſtanding his ſalary may ariſe in part from the forfeitures and penalties. *ſ.* 68.

Fines.

No fine, iſſue, penalty, or forfeiture, for not repairing highways, or not appearing to any indictment or preſentment for not repairing the ſame, ſhall be returned into the exchequer or other court, but ſhall be levied by and paid to ſuch perſon or perſons, reſiding in or near the pariſh, townſhip, or place where the road ſhall lie, as the court impoſing the ſame ſhall order, to be applied towards the repair of the highways. And the perſon or perſons ſo ordered to receive ſuch fine, ſhall apply, and account for the ſame, according to the direction of ſuch court, or in default thereof ſhall forfeit double the ſum received. *ſ.* 47.

And if any fine, iſſue, penalty, or forfeiture, for not repairing the highways, or not appearing as aforeſaid, ſhall be levied on one or more of the inhabitants; ſuch inhabitant ſhall make his complaint to the ſpecial ſeſſions; and the juſtices there ſhall by their warrant cauſe a rate to be made, according to the form and manner herein-before preſcribed for reimburſing ſuch inhabitant. Which rate ſo made and confirmed by two juſtices ſhall be collected and levied by the ſurveyor; who ſhall within one month after making and confirming the rate, collect, levy, and pay to ſuch inhabitant the money ſo levied as aforeſaid. *Id.*

T. 20 *G.* 3. *K.* & *Townſhend.* The pariſh of *Kingſley* in *Staffordſhire* conſiſts of two diſtricts or townſhips, *viz. Kingſley* and *Wiſton.* An indictment had been preferred againſt the pariſh in general, for not repairing the high-

way

way running through it; to which there was the plea of not guilty, and the parish was convicted, and a fine imposed. This fine was levied on one *Morris*, an inhabitant of the township of *Wiston*; but it was now sworn in the court of king's bench, on the part of the inhabitants of that township, that they had no notice of the indictment, the defence being made only by the other district, and that part of the road which was out of repair, lay intirely in that other district. These facts were contradicted (though not very directly) by the affidavits on the other side. *Morris* having applied to the justices in their special sessions, a warrant was there made for a rate (to reimburse him) on the inhabitants of the township of *Kingsley*; which rate was made and confirmed by two justices according to the statute: And it having been moved for a mandamus to the surveyor of that township, to collect and levy it on the inhabitants thereof, and a rule made to shew cause; now, on shewing cause, in support of the rule, affidavits were produced that the inhabitants of each of the two districts are bound by prescription to repair only such part of the highway as is situate in their respective districts. Against the rule, it was argued, that as the indictment and conviction were of the whole parish, the rate was void; for that the justices were only authorized by the act to direct the rate to be made on the parish, township, or place presented or indicted. If the township of *Wiston* was intitled to the exemption, they ought to have appeared and pleaded specially to the indictment.—*Willes* and *Ashhurst* J^s^. (L. *Mansfield* being absent,) were of opinion, that they were not so tied down by the words of the statute, but that they might construe it agreeably to the justice of the case: That as it was sworn directly on the part of *Wiston* township (and not expressly denied on the other side) that they had no notice of the indictment, and that the inhabitants of *Kingsley* township alone had taken the defence upon them, it ought to be considered as being substantially an indictment merely against *Kingsley*.—*Buller* J. concurred; but thought the mandamus must be a special writ, suggesting that the part of the highway, which was the subject of the indictment, lay wholly in *Kingsley* township, and that the two townships were separately bound to repair their respective parts of the highway, in order to give the inhabitants of *Kingsley* an opportunity to traverse, by the return, either of these facts. To this the other two judges assented. And the rule was made absolute for a mandamus. *Douglas*, 405.

All

Penalties and forfeitures, how to be recovered, and applied.

All penalties and forfeitures by this act impoſed for any offence againſt the ſame, and all coſts and charges to be allowed and ordered by the authority of this act (the manner of levying and recovering whereof is not hereby otherwiſe particularly directed) ſhall be levied by diſtreſs, by warrant of one juſtice, where the offence, neglect, or default ſhall happen, or ſuch order for payment of coſts or charges ſhall be made (d. e. f. g. h.) which warrant ſuch juſtice ſhall grant, on conviction of the offender by confeſſion, or the oath of one witneſs, or upon order made as aforeſaid. And the penalty, when levied, ſhall be paid half to the informer, and half to the ſurveyor, for the repair of the highways, unleſs otherwiſe directed by this act. But if the ſurveyor ſhall be the informer, then the whole ſhall be employed towards the repair of the highway. And if ſuch diſtreſs cannot be found (i) and ſuch penalties and forfeitures, or the ſaid coſts and charges, ſhall not be forthwith paid; the juſtice ſhall commit him (k) to the common gaol or houſe of correction, for any time not exceeding three months, unleſs the penalty, forfeiture, coſts, and charges be ſooner paid. 13 *G.* 3. *c.* 78. *ſ.* 72.

Offender living out of the diſtrict.

And if the offender live out of the juriſdiction of the ſaid juſtice, any juſtice of the limit where ſuch perſon ſhall inhabit, on requeſt to him made, and on a true copy of the conviction and of the order of payment of ſuch coſts and charges being produced and proved before him by one witneſs upon oath, ſhall by his warrant cauſe the penalty or forfeiture mentioned in ſuch conviction, and the coſts and charges mentioned in ſuch order, or ſo much thereof as ſhall not have been paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be had, ſhall commit him to the common gaol or houſe of correction of ſuch limit, for the time and in the manner aforeſaid. *Id.*

Diſtreſs not to be made till 6 days after conviction.

Provided, that no warrant of diſtreſs, unleſs otherwiſe directed by this act, ſhall be iſſued for the levying any penalty or forfeiture, coſts or charges, until ſix days after the offender ſhall have been convicted, and an order made and ſerved upon him for payment thereof. *ſ.* 73.

Penalties above 40s. may be ſued for.

Provided alſo, that the proſecutor or informer may at his election, ſue for and recover any forfeiture or penalty impoſed by this act, which ſhall amount to 40s. or upwards (if the recovery thereof be not otherwiſe particularly directed by this act) either in the manner herein-before directed, or by action of debt in any of his majeſty's courts of record, in which it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of

—— being forfeited by an act paſſed in the 13th year of the reign of his preſent majeſty, intituled, "An act to explain, amend, and reduce into one act of parliament, the ſtatutes now in being for the amendment and preſervation of the public highways within that part of *Great Britain* called *England*, and for other purpoſes;" and the plaintiff, if he recovers, ſhall have double coſts. *ſ.* 74.

Provided, that there ſhall be no more than one recovery for the ſame offence; and that ten days' notice in writing be given to the party offending previous to the commencement of ſuch action; and that the ſame be brought within one calendar month after the offence committed. *ſ.* 75.

Witneſſes.

And no conviction ſhall be had, unleſs upon confeſſion or oath of one witneſs, or view of the juſtice. *ſ.* 76.

And any inhabitant, where the offence ſhall be committed, may be a witneſs, notwithſtanding his being an inhabitant of ſuch pariſh, townſhip, or place. *Id.*

And any juſtice may adminiſter an oath to any witneſs or other perſon, for the better diſcovery and execution of the ſeveral matters or things herein directed to be inquired into and performed. *ſ.* 77.

Irregularity in the proceedings.

Where any diſtreſs ſhall be made for any ſum to be levied by virtue of this act, the diſtreſs ſhall not be deemed unlawful, nor the party making the ſame be deemed a treſpaſſer, on account of any default or want of form in the proceedings; nor ſhall the party diſtraining be deemed a treſpaſſer *ab initio* on account of any irregularity which ſhall be afterwards done by the party diſtraining, but the perſon aggrieved by ſuch irregularity may recover full ſatisfaction for the ſpecial damage in an action on the caſe. *ſ.* 78.

And no perſon ſhall recover in any action for any irregularity, treſpaſs, or wrongful proceedings, if tender of ſufficient amends ſhall be made before the action brought; and if no tender hath been made, the defendant, by leave, may pay into court ſuch ſum as he ſhall ſee fit, whereupon ſuch proceedings ſhall be had as in other actions where the defendant is allowed to pay money into court. *ſ.* 79.

Certiorari.

And no proceedings on this act ſhall be quaſhed for want of form, or removed by certiorari, or any other proceſs into any of his majeſty's courts of record at *Weſtminſter*. *ſ.* 80.

XIX. Ap-

XIX. Appeal.

If any perſon ſhall think himſelf aggrieved by any thing done by any juſtice or other perſon in the execution of this act, and for which no particular method of relief is herein otherwiſe appointed, he may appeal to the general quarter ſeſſions, giving notice in writing (l) of his intention to bring ſuch appeal, and of the matter thereof, to the juſtice, or other perſon againſt whom the complaint ſhall be made, within ſix days after the cauſe of ſuch complaint ſhall ariſe; and within four days after ſuch notice, entering into recognizance before a juſtice, with one ſufficient ſurety, conditioned to try ſuch appeal at, and abide the order of, and pay ſuch coſts as ſhall be awarded by the juſtices at ſuch quarter ſeſſions. 13 *G.* 3. *c.* 78. *ſ.* 80.

If any perſon think himſelf aggrieved, &c.] In the caſe of *K. v.* juſtices of the *Weſt Riding of Yorkſhire*, *E.* 34 *G.* 3. Upon a rule to ſhew cauſe why a *certiorari* ſhould not iſſue to remove all orders made at the laſt general quarter ſeſſions of the peace, held at *Wakefield* on 16th *Jan.* laſt, on an appeal of *T. Forſter* againſt the allowance of the accounts of the ſurveyors of the highways of the townſhip of *Heptonſtall* in the ſaid riding, it appeared by the affidavits, that on the 2d of *October* 1793, the account of the ſurveyor was produced at a veſtry of the inhabitants of the townſhip, when ſeveral items were objected to; upon which ſeveral of the inhabitants who were diſſatisfied with the accounts attended, together with the ſurveyor, at the petty ſeſſions held at *Halifax* on 16th *October*, before three juſtices, when the juſtices unanimouſly allowed the account and confirmed the ſame. An appeal was entered againſt this determination at the next quarter ſeſſions, and the court diſallowed the ſeveral items objected to, amounting to 193*l.* 15*s.* 7*d.* and ordered the reſpondents to refund that ſum to the inhabitants of the townſhip.——The queſtion here aroſe on this act of 13 *G.* 3. *c.* 78. *ſ.* 48. 80. ——When *Buller* J. ſaid. This rule only prays for a *certiorari* to remove all orders made at the laſt quarter ſeſſions upon this ſubject, and it depends upon the conſtruction of the 48th and 80th clauſes in the general highway act. It ſeems to me, from comparing thoſe two ſections, that it was not intended to give the quarter ſeſſions any juriſdiction over this queſtion. The 80th *ſ.* only gives an appeal to the quarter ſeſſions in caſes where no other remedy is given.

Then

Then the queſtion is, Whether or not under the 48th *ſ.* any other ſpecific relief be given for this caſe. The 48th *ſ.* enacts, that the ſurveyor ſhall produce ſuch books (of accounts, *&c.*) to the inhabitants of a veſtry to be held for that purpoſe within 15 days before the ſpecial ſeſſions to be held in the week next after *Michaelmas* quarter ſeſſions, that the accounts may be inſpected by the inhabitants, *&c.*; and that after the books ſhall be produced at ſuch meeting, the ſurveyor ſhall take the ſame to ſuch juſtice at ſuch time as ſhall be agreed upon at ſuch meeting before the laſt mentioned ſpecial ſeſſions, and ſuch juſtice may allow ſuch account or poſtpone it until ſuch ſpecial ſeſſions, *&c.* The appointment to go before the juſtice is to be made with the conſent of the inhabitants and of the ſurveyor; and if they all conſent at firſt to go to the petty ſeſſions inſtead of going before the magiſtrate, I doubt whether any of the parties can afterwards object to it. The juſtices at the petty ſeſſions have the ſame power over the ſurveyor's accounts that any one juſtice has. Then as a remedy is given in this caſe in 48th *ſ.* the juſtices at the quarter ſeſſions had no juriſdiction to receive this appeal, and we are bound to grant a writ of *certiorari* to remove the proceedings at thoſe ſeſſions.——*Groſe* J. The clauſe which directs the ſettling theſe accounts at the ſpecial ſeſſions is founded on juſtice and wiſdom, and was calculated to ſave an infinity of expence and trouble to the pariſhioners. On comparing this ſection with the 80th, I am ſatisfied that the legiſlature did not intend to give any appeal to the quarter ſeſſions on this ſubject; that being the caſe, all the proceedings at the quarter ſeſſions were *coram non judice*; and the clauſe which takes away the *certiorari* does not extend to a caſe where the juſtices at the ſeſſions acted wholly without juriſdiction. Rule abſolute. *Durnf.* and *Eaſt*, 5 V. 629. 701.

And ſuch juſtice and other perſon, having received ſuch notice, ſhall return all proceedings had before them, touching the matter of ſuch appeal, to the ſaid general quarter ſeſſions; on pain of 5l. 13 *G.* 3. *c.* 78. *ſ.* 80.

And the juſtices at ſuch ſeſſions, on proof of ſuch notice given, and of the entering into ſuch recognizance, ſhall determine the appeal in a ſummary way, and award coſts to either party, to be levied and recovered as hereinbefore directed. *Id.*

Provided, that no appeal ſhall be made againſt any conviction for a penalty or forfeiture, unleſs the perſon convicted ſhall at the time of ſuch conviction if he be then

preſent, if not, within ſix days after, give notice of his intention to appeal, and at the ſame time enter into recognizance with ſufficient ſureties to pay ſuch penalty or forfeiture, in caſe the conviction be affirmed upon the appeal: And on his giving ſuch ſecurity, the further proceeding for ſuch penalty or forfeiture ſhall be ſuſpended until the appeal be heard and determined. 13 G. 3. c. 78. ſ. 80.

XX. Limitation of actions.

If any action ſhall be commenced for any thing done in the execution of this act, the ſame ſhall be brought within three months, and within the county where the fact was committed, and the defendant may plead the general iſſue; and if he prevails in the action, he ſhall have treble coſts. 13 G. 3. c. 78. ſ. 81.

Highways, turnpike.

II. Concerning turnpike roads in particular.

I. General qualification of truſtees.
II. Officers in general.
III. Meetings.
IV. Payment of ſubſcriptions inforced.
V. Stamp duties with reſpect to turnpike roads.
VI. Weighing engines to be erected, with additional toll for over-weight.
VII. Breadth and tire of wheels.
VIII. Number of horſes or beaſts of draught.
IX. Toll for cattle going to or from water or paſture.
X. Carriages to be marked.
XI. Driver miſbehaving.
XII. Power of the general highway acts tranſferred to turnpike roads.

XIII. Sta-

XIII. Statute duty and other labour on turnpike roads.
XIV. Annoyances to be removed.
XV. Side gates.
XVI. Farming the tolls.
XVII. Mortgagee to account.
XVIII. Power of leſſening the tolls.
XIX. Demoliſhing gates, and doing other damage.
XX. Penalty of evading the tolls, or obſtructing the execution hereof.
XXI. Levying and application of forfeitures.

I. General qualification of truſtees.

IN many of the acts for repairing turnpike roads, there is a clauſe aſcertaining the quantity of eſtate which a man ſhall be poſſeſſed of, in order to entitle him to act as a truſtee in the execution of ſuch act: And by the 13 *G.* 3. *c.* 84. Where no ſuch qualification is directed by any ſuch particular act, it is generally provided, that in ſuch caſe, no perſon ſhall be capable of acting as a truſtee in the execution of any ſuch act, unleſs he ſhall be in his own right, or in the right of his wife, in the actual poſſeſſion or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of 40*l.*; or poſſeſſed of or entitled to a perſonal eſtate to the value of 800*l.*; or heir apparent of a perſon poſſeſſed of an eſtate in land of the clear yearly value of 80*l.*; and unleſs, before he acts (not being ſuch heir apparent) he take and ſubſcribe the following oath before two truſtees: "*I* A. B. *do ſwear that I truly and* bona fide *am in my own right* [or, *in the right of my wife*] *in the actual poſſeſſion and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of forty pounds:* [or, *poſſeſſed of, or entitled to, a perſonal eſtate of the value of eight hundred pounds*, as the caſe may be:] *So help me God.*" And if he ſhall act contrary hereto, he ſhall forfeit 50*l.* to him who ſhall ſue: And the proof of the qualification ſhall lie on the perſon proſecuted. *ſ.* 44.

II. Officers in general.

No perſon keeping a victualling houſe, alehouſe, or other houſe of public entertainment, or who ſhall ſell any wine, cyder, beer, ale, ſpirituous or other ſtrong liquors, Officers not to be alehouſe keepers.

by retail, ſhall be capable of acting as truſtee, or of holding any place of truſt or profit under the truſtees, or of collecting the toll; but no ſuch perſon ſhall be precluded from farming ſuch tolls, provided he employs a perſon to collect them who ſhall not be under ſuch in capacity. 13 G. 3. c. 84. ſ. 46.

Treaſurer and ſurveyor to give bond.

Every treaſurer and ſurveyor ſhall, within one month after his appointment, give bond (without ſtamp) to the truſtees, with a ſufficient ſurety, in ſuch penalty as the truſtees at a meeting ſhall direct, duly to pay and account for all ſuch money which ſhall be then in his hands, or which he ſhall afterwards receive as treaſurer or ſurveyor. ſ. 65.

Gatekeeper not removeable till chargeable, nor toll houſes rateable to the poor.

No gatekeeper, or perſon renting the tolls, and reſiding in the toll houſe, ſhall be removable by any order of two juſtices as to his ſettlement, unleſs he ſhall be actually chargeable; nor ſhall he gain a ſettlement by ſuch renting and reſidence in the pariſh or place where the toll houſe is ſituate: And no tolls or toll houſe ſhall be aſſeſſed towards the poor rate, or any other public or parochial levy. ſ. 56.

Gatekeepers to give an account of miſdemeanors.

And if any gatekeeper ſhall ſuffer any waggon, wain, cart, or other carriage to paſs through the gate, or to be drawn or paſs within his view or with his knowledge, with any greater number of horſes or beaſts of draught; or with any carriage conſtructed or drawn in any other manner, or without ſuch names and deſcriptions painted thereon, as are in this act directed; and ſhall not within one week proceed for the recovery of the forfeitures; he ſhall forfeit 40s. ſ. 57.

Gatekeepers and ſurveyors to give an account of money received by them.

And the gatekeeper, and alſo the ſurveyor, ſhall, when required by notice in writing from the truſtees or any five of them, render upon oath, to be adminiſtered by a truſtee, an account in writing of all money received by them on account of the road, and not before accounted for; on pain of 5 l. to be recovered in a ſummary manner before one juſtice, and applied to the uſe of the road. ſ. 55.

Gatekeeper dying.

Upon the death of a gatekeeper, two truſtees may appoint another till the next meeting. ſ. 54.

And if the wife or family of a gatekeeper who ſhall die, ſhall refuſe to deliver up poſſeſſion within four days after another ſhall be appointed; or if a gatekeeper ſhall be diſcharged from his office, and ſhall refuſe to deliver up poſſeſſion within two days after notice given to him of his diſcharge; one juſtice may by his warrant order the conſtable, with ſuch aſſiſtance as ſhall be neceſſary, to enter

the

the houſe and premiſes in the day time, and remove the perſons who ſhall be found therein, together with their goods, out of ſuch houſe, and put the new appointed officer in poſſeſſion. *ſ.* 54.

Officers to account.

All clerks, treaſurers, ſurveyors, and other officers, and their reſpective executors and adminiſtrators, ſhall within ten days after notice in writing given to them by the truſtees, or five of them, at a meeting, produce and deliver up all books, accounts, papers, or writings, relative to the execution of their offices; on pain of 20l. *ſ.* 45.

General penalty on officers not doing their duty.

Every conſtable refuſing or neglecting to put this act in execution, or to account for and deliver any forfeiture or penalty; and every ſurveyor, toll taker, and all perſons employed by the truſtees, who receive ſalaries,—that ſhall neglect, for the ſpace of one week after an offence committed, to lay ſuch information on oath before a juſtice as by this act is directed; ſhall forfeit 10l. *ſ.* 73.

III. Meetings.

Meetings how to be ſuſtained.

By the 13 *G.* 3. *c.* 84. Where a ſufficient number of truſtees ſhall not meet on the day appointed; ſo many of them as do meet, or if none ſhall be preſent, the clerk ſhall cauſe ten days' notice in writing to be affixed on all the toll gates erected on the ſaid road; or if none ſhall be then erected, in the moſt conſpicuous place in one of the principal towns neareſt to which the roads lie (and in ſuch caſe alſo in ſome public newſpaper circulated in that country) appointing the truſtees to meet at ſuch place where the preceding meeting was appointed to have been held. *ſ.* 49.

And by the 18 *G.* 3. *c.* 63. Where the truſtees ſhall not meet on the day appointed for their firſt meeting, or on any day appointed by adjournment, or ſhall not adjourn, or when the day appointed for the firſt meeting hath elapſed before the paſſing of the act; any five or more of them may cauſe notice under their hands to be affixed on all the turnpike gates on the ſaid road; or if none ſhall be then erected, they may cauſe the like notice to be affixed in ſome conſpicuous place in one of the market towns near the road, and alſo to be publiſhed in ſome newſpaper circulated in that part of the country, at leaſt twenty days before, appointing the truſtees to meet at the place where the laſt preceding meeting was appointed to have

been held, or at the place directed for the first meeting, if no preceding meeting hath been held. *ſ.* 1.

And no meeting ſhall be adjourned for longer time than three kalendar months. 13 *G.* 3. *c.* 84. *ſ.* 50.

Hours of buſineſs.

And no buſineſs ſhall be proceeded on at a meeting, before the hour of ten in the forenoon; and no adjournment ſhall be made to any hour later than two in the afternoon of the day on which ſuch meeting ſhall be appointed to be held. *Id.*

Proceedings are valid although the truſtees may not have been regularly appointed.

And whereas ſome perſons may have acted as truſtees in the execution of certain turnpike acts without having been regularly appointed, and doubts may ariſe whether the proceedings of the truſtees had at any meetings where ſuch perſons have acted are ſtrictly legal, for obviating whereof it is enacted, that all proceedings of truſtees for any turnpike road, at meetings where any ſuch perſons have acted, ſhall be as good, valid, and effectual in the law, as if ſuch perſon had been duly appointed; and that no ſuch perſon ſhall be liable to be proſecuted for having ſo acted, provided, that at the time he ſo acted as a truſtee, he had an eſtate ſufficient to qualify him, and had alſo taken the oath required by perſons acting as truſtees. 25 *G.* 3. *c.* 82. *ſ.* 7.

Orders to be ſigned.

And every act agreed upon at any meeting ſhall be ſigned at the ſaid meeting by a competent number of truſtees; otherwiſe the ſame ſhall be void. 13 *G.* 3. *c.* 84. *ſ.* 50.

IV. Payment of ſubſcriptions inforced.

If any perſon ſhall agree to advance any ſum for making or repairing any turnpike road, and ſhall ſubſcribe his name to any writing for that purpoſe; he ſhall be liable to pay the ſame accordingly: and in default of payment within 21 days after the ſame ſhall become payable according to the purport of ſuch writing, and ſhall be demanded by the perſon to whom the ſame is made payable by ſuch writing, or if no perſon be named therein, then by the treaſurer of the turnpike; ſuch treaſurer or other perſon may ſue for and recover the ſame. 13 *G.* 3. *c.* 84. *ſ.* 35.

V. Stamp duties with reſpect to turnpike roads.

For the encouragement of the ſtamp duties, it is enacted by the 23 *G.* 3. *c.* 58. That all ſuch parts of any act of parliament,

parliament, relative to any turnpike road, paſſed before *Dec.* 5, 1782, as exempt any mortgage, aſſignment, tranſfer, or other ſecurity for borrowing money, or any nomination, contract, bond, warrant, judgment, or other writing liable to ſtamp duties, from being ſtamped, ſhall be and are repealed. *ſ.* 15.

VI. Weighing engines to be erected, with additional toll for over-weight.

Weighing engines to be erected.

The truſtees, or five of them, at a meeting, may, if they think proper, at any toll gate, or in any part of the road, cauſe a crane, machine, or engine to be erected, for the weighing of carts, waggons, or carriages, conveying any goods or merchandize whatſoever; and by writing ſigned by them may cauſe ſuch carriage to be weighed, together with the loading thereof. (m) 13 *G.* 3. *c.* 84. *ſ.* 1.

Additional toll for over-weight.

And may take, over and above the other tolls, an additional toll for every hundred weight, of 112lb. to the hundred, which every ſuch carriage with the loading thereof ſhall weigh, over and above the weights hereby allowed to each of them reſpectively, *viz.*

To every waggon or four wheel carriage, having the fellies or rollers of the wheels of the breadth of 16 inches; 8 tons in ſummer, and 7 in winter:

To every waggon or wain having the axle trees thereof of ſuch different lengths, that the diſtance from wheel to wheel of the nearer pair of the ſaid wheels be not more than 4 feet 2 inches, to be meaſured at the ground; and that the diſtance from wheel to wheel of the other pair thereof be ſuch, that the fore and hind wheels ſhall roll only one ſingle ſurface or path of 16 inches wide at the leaſt, on each ſide of the ſaid waggon or wain, and having the fellies thereof of the breadth of 9 inches from ſide to ſide at the bottom, 6 tons 10 hundred in ſummer, and 6 tons in winter:

To every waggon or 4 wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches; 6 tons in ſummer, and 5 tons 10 hundred in winter:

To every cart, having the fellies of 9 inches; 3 tons in ſummer, and 2 tons 15 hundred in winter:

To every waggon having the ſole or bottom of the fellies of the wheels of the breadth of 6 inches; 4 tons 5 hundred in ſummer, and 3 tons 15 hundred in winter:

To every ſuch waggon ſo conſtructed as to roll a ſurface

of 11 inches; 5 tons ten hundred in ſummer, and 5 tons in winter:

To every cart having the fellies of the wheels of the ſame dimenſions; 2 tons twelve hundred in ſummer, and 2 tons ſeven hundred in winter:

To every waggon having the ſole or bottom of the fellies of the wheels of leſs breadth than 6 inches; 3 tons ten hundred in ſummer, and 3 tons in winter:

And to every cart having the fellies of the wheels of the ſame dimenſions; 1 ton 10 hundred in ſummer, and 1 ton 7 hundred in winter:

And for the ſeveral purpoſes aforeſaid, it ſhall be deemed ſummer from *May* 1, to *Oct.* 31; and winter from *Nov.* 1, to *April* 30; both incluſive. 13 *G.* 3. *c.* 84. *ſ.* 1.

Which ſaid additional toll ſhall be as follows; *viz.*

For the firſt and ſecond hundred of ſuch over-weight, the ſum of 3d. for each hundred:

For every hundred above two hundred, and not exceeding five hundred, the ſum of 6d.

For every hundred above five hundred weight, and not exceeding ten hundred, the ſum of 2s. 6d.:

For every hundred above ten hundred weight, and not exceeding fifteen hundred, the ſum of 5s.:

For every hundred above fifteen hundred, the ſum of 20s.

Provided, that the truſtees of the ſeveral turnpike roads within ten miles of *London*, *Weſtminſter*, and *Southwark*, may lower theſe additional tolls as they ſhall think fit. 14 *G.* 3. *c.* 82.

Toll taker to weigh.

The toll gate keeper, or other perſon appointed to the care of the weighing engine, ſhall weigh all ſuch waggons and carts as he ſhall have reaſon to believe carry greater weights than are allowed to paſs without paying the additional toll: And if he ſhall permit ſuch waggon or cart to paſs through any ſuch toll gate with greater weights than are hereby allowed, without weighing the ſame and receiving the additional tolls; he ſhall forfeit 5l. 13 *G.* 3. *c.* 84. *ſ.* 2.

And in order to detect any connivance or neglect of duty in the perſon ſo appointed to weigh the carriages, any truſtee, creditor, clerk, treaſurer, or ſurveyor of ſuch turnpike road, may cauſe any carriage which ſhall have paſſed thro' the gate and not gone above 300 yards further to return and be weighed, paying to the driver the ſum of 1s.; which ſum ſhall be returned by the driver, if the carriage and loading be above the weight hereby allowed. *ſ.* 3.

And if the driver refuſe to return, he ſhall forfeit 40s.;

and

and any other perſon, being then preſent, may drive back ſuch carriage in order to be weighed. *ſ.* 4.

And the ſurveyor ſhall make convenient places for turning ſuch carriages within 300 yards of the gate, on each ſide thereof, if the ground will admit of it. *Id.*

Liſt of names to be put up at the weighing engine.

And there ſhall be a liſt of the names of all the truſtees and creditors, and alſo of the clerk, treaſurer, and ſurveyor of ſuch turnpike road, put up in the houſe or building where ſuch weighing engine ſhall be placed, to be inſpected by the owner or driver of every ſuch carriage. *ſ.* 4.

Acts continued to defray the expence of the engines.

In order to compenſate for the expences of erecting ſuch weighing engine, and to prevent any prejudice thereby to the creditors, all acts of parliament made for repairing turnpike roads, the truſtees whereof ſhall within 12 months after the commencement of this act have cauſed ſuch engine to be erected, ſhall be continued further for five years from the time of the expiration thereof. *ſ.* 5.

Exemptions from weighing.

Provided, that the aforeſaid regulations of weight ſhall not extend to any waggon, cart, or carriage, employed only in huſbandry, or carrying only manure for land, hay, ſtraw, fodder, or corn unthraſhed. 13 *G.* 3. *c.* 84. *ſ.* 6. Nor ſhall ſuch carriages be weighed (except hay or ſtraw carried for ſale). 14 *G.* 3. *c.* 82.

And by the 18 *G.* 3. *c.* 63. No toll or duty ſhall be taken by virtue of any act for repairing any public road, for any horſes belonging to officers or ſoldiers upon their march or upon duty, or for any horſes, cattle, or carriages, employed in carrying the arms or baggage of any ſuch officers or ſoldiers, or in carrying any ſick, wounded, or diſabled officers or ſoldiers; and no carriages ſo employed ſhall be ſubject to be weighed at any engine erected upon any turnpike road, nor the owner or driver liable to any forfeiture for over-weight. *ſ.* 2.

The ſeſſions may cauſe engines to be erected.

And the juſtices in ſeſſions, on complaint to them made, by any juſtice or two creditors or truſtees, may cauſe ſuch engines to be erected, and the expences thereof to be paid out of the tolls. 13 *G.* 3. *c.* 84. *ſ.* 7.

Engine where two roads meet.

Where two or more roads meet at or near the ſame place, the truſtees of ſuch roads reſpectively, at a meeting for that purpoſe, may fix upon ſome convenient place to erect a weighing engine upon, which will accommodate all ſuch roads; and proportion the expences, and the money ariſing from forfeitures for over-weight, in ſuch manner as they ſhall judge reaſonable. *ſ.* 8.

Table of the tolls to be put at the gate.

The truſtees ſhall cauſe to be put up and continued upon every toll gate, a table of all the tolls payable at every ſuch gate, diſtinguiſhing each toll, and the different ſorts of carriages for which they are to be paid; and alſo a table of the weights allowed for each carriage, with the loading thereof in ſummer and winter. *ſ.* 66.

VII. Breadth and tire of wheels.

Diminution of tolls in reſpect of broad wheels.

Whereas by ſeveral acts of parliament for particular turnpike roads, ſeveral high tolls are granted for waggons, carts, and other carriages, drawn by more than a certain number of horſes or beaſts of draught, with intent, in effect, to prohibit the paſſage of ſuch carriages, and thereby the better to preſerve the roads; it is enacted, that the truſtees of ſuch road, or any five of them, at the firſt meeting after the commencement of this act, ſhall mitigate and reduce the ſame high tolls, in reſpect of ſuch waggons or other wheel carriages only, having the wheels of the breadth of 6 inches, in ſuch manner, as no greater toll in reſpect to *waggons* be taken for the ſame than is directed by the ſaid acts reſpectively to be taken for waggons and other four wheeled carriages drawn by 4 horſes or beaſts of draught; and that no greater toll be taken for *carts* having the fellies of their wheels of the breadth of 6 inches, than is directed by ſuch acts to be taken for carts drawn by 3 horſes. 13 *G.* 3. *c.* 84. *ſ.* 22.

Increaſe of tolls in reſpect of narrow wheels.

The turnpike truſtees, or perſons authorized by them, ſhall take for every waggon, wain, cart, or carriage, having the fellies of the wheels of leſs breadth than 6 inches from ſide to ſide, at the bottom or ſole thereof, and for the horſes or beaſts of draught drawing the ſame, one half more than the tolls payable for the ſame reſpectively. *ſ.* 23. 18 *G.* 3. *c.* 28.

And whereas there are in ſeveral turnpike acts, exemptions allowed from payment of tolls in particular caſes, and liberties allowed in particular caſes, to pay leſs than are charged upon other waggons, carts, or carriages, paſſing through turnpike gates; and whereas it will tend to the advantage and preſervation of turnpike roads, to confine ſuch exemptions and liberties to carriages with wheels of the breadth of 6 inches or upwards; it is enacted, that no perſon ſhall, by virtue of the ſaid acts, have any benefit or advantage of any exemption from toll or part of toll, or to pay leſs in reſpect of any waggon, cart, or other carriage, or horſe drawing the ſame, and carrying

carrying any particular kind of goods, than other carriages of the like nature carrying other goods ought to pay, unleſs ſuch waggon, cart, or other carriage have the ſole or bottom of the fellies of the wheels of the breadth of 6 inches or upwards: Except carts and carriages carrying corn in the ſtraw, hay, ſtraw, fodder, dung, lime for the improvement of land, or other manure, or any implements of huſbandry. *ſ.* 24.

Exemptions in reſpect of flat wheels.

Provided, that no perſon ſhall have the benefit of any ſuch exemption, or any privilege of compounding for tolls, in reſpect of any carriage having the fellies of the wheels of the breadth of 6 inches or upwards, unleſs the fellies, and the tire upon ſuch fellies ſhall lie ſo flat, as not to deviate more than one inch from a flat ſurface. 13 *G.* 3. *c.* 84. *ſ.* 9. 25. 16 *G.* 3. *c.* 39.

Provided alſo, that all waggons, carts, or carriages, moving upon rollers, of the breadth of 16 inches on each ſide thereof, with flat ſurfaces, ſhall paſs on any turnpike road toll free (for five years from *Michaelmas* 1774, 14 *G.* 3. *c.* 82.) and afterwards, paying only ſo much toll as ſhall not exceed half of the full toll payable for carriages having the fellies of the wheels of the breadth of 6 inches from ſide to ſide, and not rolling a ſurface of 16 inches on each ſide thereof: And that no more than half toll ſhall be paid in reſpect of waggons having the fellies of the wheels of the breadth of 9 inches, and rolling a ſurface of 16 inches on each ſide thereof, from and after the commencement of this act. *ſ.* 26.

General exceptions.

Provided always, that nothing herein contained ſhall extend to any chaiſe marine, coach, landau, berlin, chariot, chaiſe, chair, calaſh, or hearſe; or to the carriage of ſuch ammunition or artillery as ſhall be for his majeſty's ſervice; or to any cart or carriage drawn by one horſe or two oxen and no more; or to any carriage having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, which ſhall be laden with one block of ſtone, one piece of marble, one cable rope, one piece of metal, or one piece of timber. 13 *G.* 3. *c.* 84. *ſ.* 27.

And no toll ſhall be paid at any turnpike gate, in reſpect of carriages ſolely employed in carrying materials for the repair of any turnpike road or public highway, or for going to or returning from ſuch employment. *ſ.* 60.

VIII. Number of horſes or beaſts of draught.

Number of horſes.

No waggon or other four-wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall paſs on any turnpike road with more than 8 horſes; nor any cart or other two-wheeled carriage, having wheels of the breadth aforeſaid, ſhall paſs on any turnpike road with more than 5 horſes: And the horſes in ſuch reſpective carriages ſhall draw in pairs (except an odd horſe in any team, and except where the number of horſes ſhall not exceed four):

And no waggon or other four-wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of ſix inches, ſhall paſs on any turnpike road with more than ſix horſes; nor any cart or other two-wheeled carriage, having wheels of the like breadth, ſhall paſs on any turnpike road with more than 4 horſes:

And no waggon or other four-wheeled carriage having the fellies of the wheels of leſs breadth than 6 inches, ſhall paſs on any turnpike road with more than 4 horſes; nor any cart or other two-wheeled carriage, having the fellies of the wheels of leſs breadth than 6 inches, ſhall paſs on any turnpike road with more than three horſes:

On pain that the owner of every ſuch carriage ſhall forfeit 5*l.* and the driver (not being the owner) 20*s.* to any perſon who ſhall ſue for the ſame. 13 *G.* 3. *c.* 84. *ſ.* 13.

And for all the purpoſes of this act, two oxen or neat cattle ſhall be conſidered as one horſe. *ſ.* 67.

Provided, that no proſecution ſhall be commenced before a juſtice by way of *information*, for any forfeiture incurred by the owner or driver of any carriage having a greater number of horſes therein than are allowed by this act, unleſs ſuch information be laid within 3 days after the offence committed; and that no *action* ſhall be commenced, unleſs within one kalendar month after the offence committed; and that neither ſuch information nor action ſhall be brought, unleſs notice be given by the informer to the driver on the day on which the offence ſhall be committed, of an intention to complain of ſuch offence. And if it ſhall appear to the juſtice before whom ſuch complaint ſhall be made, that the offender lives ſo remote as to make it inconvenient to ſummon him; the juſtice may diſmiſs the complaint, and leave the informer to his remedy by action at law. *ſ.* 15.

If

If it ſhall appear to the truſtees of any turnpike road, or any 7 of them, at a meeting, by the oath of one witneſs experienced in levelling, that any part of the riſe of an hill upon ſuch road ſhall be more than 4 inches in a yard; they may allow (n) ſuch number of horſes as they ſhall judge neceſſary, not exceeding 10 for waggons with 9 inch wheels, nor 6 for carts with 9 inch wheels; and not exceeding 7 for waggons with 6 inch wheels, nor 5 for carts with 6 inch wheels; and not exceeding 5 for waggons with wheels of leſs breadth than ſix inches, nor 4 for carts with wheels of leſs breadth than 6 inches:

Exception of drawing up ſteep hills.

And in caſe it ſhall appear that the whole riſe of any hill taken together ſhall be more than four inches in a yard upon an average, they may allow ſuch number of horſes as they ſhall think fit, for the purpoſe only of drawing up ſuch hill; the length and extent of ſuch hill to be ſpecified in ſuch order of allowance, and the termination at each end thereof to be marked by a poſt or ſtone; and the ſaid order of allowance to be certified (o) to the next ſeſſions, who on proof upon oath may confirm or diſallow the ſame, and the juſtices at any ſubſequent ſeſſions may reconſider and diſcharge the ſame if they think fit. ſ. 18.

Exception of ice or ſnow.

And if it ſhall appear, upon the oath of credible witneſſes, to the ſatisfaction of any juſtice or court authorized to inforce the execution of this act, that any carriage could not, by reaſon of deep ſnow or ice, be drawn with the reſpective weights, and by the number of horſes or beaſts of draught hereby allowed; they may ſtop all proceedings before them for the recovery of any penalty or forfeiture for drawing with a greater number of horſes or beaſts of draught than are hereby allowed. ſ. 19.

Narrow wheeled carriages not to be drawn by horſes in pairs.

Whereas great damage is done to turnpike roads by waggons and other carriages with narrow wheels drawn by horſes in pairs; it ſhall not be lawful for any waggon, wain or cart, having the ſole or bottom of the fellies of the wheels thereof of leſs breadth than 9 inches, to paſs upon any turnpike road, if the ſame ſhall be drawn by horſes in pairs: Except ſuch, having the fellies of the breadth of ſix inches, as ſhall be authorized to be drawn in any other manner by order of the truſtees at a meeting conſiſting of 7 or more; and except carriages drawn by two horſes only. ſ. 20.

Apprehending offenders.

And if any perſon ſhall drive with more than the number of horſes hereby allowed; the conſtable, ſurveyor, or any

any other perſon, may apprehend and carry him before a juſtice, and upon conviction by confeſſion or oath of one witneſs, he ſhall forfeit not exceeding 5l. nor leſs than 10s. *ſ.* 21.

Exception as to Wales.

The juſtices in *Wales*, at their *Michaelmas* quarter ſeſſions yearly, may licenſe an increaſe of the number of horſes in drawing carriages on any turnpike road, over and above the number herein-before limited, if upon inquiry they find an additional number neceſſary; and may alter, vary, or revoke the ſame as they ſhall think fit. *ſ.* 59.

IX. Toll for cattle going to or from water or paſture.

By the 17 *G.* 3. *c.* 16. Whereas an exemption from toll by ſeveral particular turnpike acts hath been granted for cattle going to and from water and paſture, and many diſputes have ariſen how far that exemption extended; it is enacted, that in all caſes where any exemption from toll for cattle going to and from water or paſture is or ſhall be given by any turnpike act, ſuch exemption ſhall only extend to ſuch cattle as ſhall be driven to and from water or paſture from one pariſh to the next adjoining pariſh, or to ſuch cattle as ſhall not paſs upon any ſuch turnpike road more than for the ſpace of two miles in going to or returning from water or paſture.

Going to or returning from water or paſture.] *T.* 36 *G.* 3. *Harriſon* v. *Brough.* This was an action of treſpaſs for taking the plaintiff's horſe for refuſing to pay toll under the act of 16 *G.* 3. *For repairing the highways leading to Highgate, gatehouſe,* &c. in which act is a clauſe exempting from tolls cattle going to or returning from paſture, *and horſes attending the ſame.* In ſupport thereof it was contended, *inter alia*, that the exemptions were introduced into the act for the benefit of huſbandry, and that it would be almoſt ridiculous to ſay, that the horſe ſhould be exempted *when returning with the cattle*, but ſhould yet be liable to the toll *when going to fetch the cattle from paſture.* —— But by L. *Kenyon* Ch. J. The queſtion is, Whether a horſe going to fetch cattle was attending the cattle at the time? barely ſtating the queſtion is anſwering it; when the horſe is *attending* the cattle, the turnpike-man can ſee what is paſſing, and of courſe can judge when the party is entitled to the benefit of the exemption, but he has no means of knowing whether a horſe is *going to fetch* cattle: if this were allowed to be an exemption, it would open a great

great door to fraud on the turnpike men; I am therefore of opinion that the plaintiff is neither within the words or the ſpirit of the exemption. *Durnf.* and *Eaſt*, 6 V. 706.

X. Carriages to be marked.

For the better diſcovery of offenders, the owner of every waggon, wain, or cart, and alſo of every coach, poſt-chaiſe, or other carriages, let to hire, ſhall cauſe to be painted upon ſome conſpicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all ſuch coaches, poſt-chaiſes, or other carriages, before the ſame ſhall be uſed on any turnpike road, his chriſtian and ſurname, and place of abode, in large legible letters, and continue the ſame thereupon. And the owner of every common ſtage waggon or cart, employed in travelling ſtages from town to town, ſhall, over and above his chriſtian and ſurname, cauſe to be painted on the part, and in the manner aforeſaid, the following words:—COMMON STAGE WAGGON (or CART, as the caſe may be). And every perſon uſing any ſuch carriage upon any turnpike road, without the names and deſcriptions painted thereon reſpectively, or who ſhall paint or cauſe to be painted on ſuch carriage any fictitious name or place of abode, ſhall forfeit for every offence not exceeding 5l. nor leſs than 20s. 13 *G.* 3. *c.* 84. *ſ.* 68.

And if any perſon ſhall, upon any turnpike road, *drive* any waggon, wain, cart, or carriage, not being marked as aforeſaid; the conſtable, ſurveyor, or any other perſon, may apprehend and carry him before a juſtice, and on conviction by confeſſion or oath of one witneſs, he ſhall forfeit not exceeding 5l. nor leſs than 10s. *ſ.* 21.

XI. Driver miſbehaving.

If the driver of any cart, carriage, dray, or waggon ſhall ride upon the ſame in any ſtreet or highway, not having ſome other perſon on foot or on horſeback to guide the ſame (ſuch carriages as are conducted by ſome perſon holding the reins of the horſe or horſes drawing the ſame excepted); —— or if the driver of any carriage, on any part of any ſtreet or highway, ſhall, by negligence or wilful miſbehaviour, cauſe any hurt or damage to any perſon or carriage paſſing or being upon ſuch ſtreet or highway; —— or ſhall quit the highway, and go to the other ſide of the hedge or fence incloſing the ſame; —— or wilfully

be

be at ſuch diſtance from ſuch carriage, or in ſuch ſituation, that he cannot have the direction and government of the horſes or cattle drawing the ſame; —— or ſhall, by negligence or wilful miſbehaviour, prevent or hinder the free paſſage of any other carriage or of his majeſty's ſubjects; —— or if the driver of any empty or unloaded waggon, cart, or other carriage, ſhall refuſe or neglect to turn aſide and make way for any coach, chariot, chaiſe, loaded waggon, cart, or other loaded carriage; ——— or if any perſon ſhall drive or act as the driver of any ſuch coach, poſt-chaiſe, or other carriage ſet for hire, or waggon, wain, or cart not having the owner's name, as hereby required, painted thereon, or ſhall refuſe to diſcover the true chriſtian and ſurname of the owner of ſuch reſpective carriage: he ſhall, on conviction before one juſtice, by confeſſion or view of the juſtice, or oath of one witneſs, forfeit any ſum not exceeding 10s. in caſe the driver ſhall not be the owner of ſuch carriage; and if the offender be the owner, then any ſum not exceeding 20s.; and in default of payment, ſhall be committed to the houſe of correction for any time not exceeding one month, unleſs ſuch forfeiture ſhall be ſooner paid. And every ſuch driver may, without any warrant, be apprehended by any perſon who ſhall ſee ſuch offence committed, and ſhall be immediately conveyed to a conſtable or other peace officer, in order to be carried before a juſtice. And if ſuch driver ſhall refuſe to diſcover his name, the juſtice ſhall commit him to the houſe of correction for any time not exceeding 3 months; or may proceed againſt him for the penalty by a deſcription of his perſon and offence, and expreſſing in the proceedings that he refuſed to diſcover his name. 13 *G.* 3. *c.* 84. *ſ.* 40.

XII. Powers of the general highway acts transferred in aid of turnpike roads.

Turnpike ſurveyor may act in the ſame manner as the townſhip ſurveyor.

Where the powers given by ſeveral turnpike acts are ineffectual for providing materials for the uſe of the turnpike roads therein deſcribed; and alſo for enlarging, diverting and turning ſuch turnpike roads; and ſtopping up, and ſelling of the old roads; and alſo for making, opening, and cleanſing of ditches and drains, and the cutting and pruning of hedges and trees; and alſo for calling forth the ſtatute duty which ſhall belong to ſuch turnpike roads: the ſurveyor of every turnpike road may, with the approbation of the truſtees, put in execution the

ſeveral powers more amply given for the like purpoſes in the general highway act or acts, as fully and amply as the ſurveyors of the ſeveral pariſhes or townſhips can or may do, by virtue of ſuch general highway act or acts. 13 *G.* 3. *c.* 84. *ſ.* 70.

XIII. Statute duty and other labour on turnpike roads.

Statute duty to be performed within the diſtrict.

The turnpike ſurveyor ſhall cauſe the ſtatute duty required by the ſeveral turnpike acts, and compoſitions ariſing from the ſame, to be expended upon the turnpike road lying within the pariſh, townſhip, or place, from which ſuch duty ſhall be required, and not elſewhere, on pain of 40s. 13 *G.* 3. *c.* 84. *ſ.* 32.

Getting materials.

No turnpike ſurveyor ſhall gather or cauſe to be gathered any looſe ſtones for the uſe of the road, upon the common fields or incloſed lands of any perſon, without the conſent of the occupier, or a licence from a juſtice, after having ſummoned ſuch occupier to come before him, and heard his reaſons, if he ſhall appear, and give any, for refuſing his conſent. *ſ.* 61.

And where any materials ſhall be got by the ſurveyor in the ſeveral or incloſed grounds of any perſon for the uſe of any turnpike road, under the authority of this act or of the ſaid general highway act or acts; ſatisfaction ſhall be made by the truſtees of ſuch turnpike road to the owner or occupier of ſuch grounds for the materials ſo to be got, and alſo for the damages in carrying the ſame away, in ſuch manner as ſatisfaction is to be made by the ſaid general highway act or acts. *ſ.* 71.

And on every turnpike road, where a ſufficient quantity of ſtone, gravel, chalk, or other materials cannot be provided and carried by the labourers and teams required to perform ſtatute duty upon the ſame; the ſurveyor, with the approbation of the truſtees, ſhall contract for the getting and carrying thereof, at ſome time and place to be fixed for that purpoſe, of which ten days' notice (p) in writing ſhall be given, by fixing the ſame on the door of the church or chapel, or if there be no church or chapel, then at the moſt public place there, which notice ſhall ſpecify the work to be done, and the time and place for letting thereof; and if any ſurveyor ſhall have any ſhare in the contract, or in any other contract for work or materials, or ſhall let to hire any team, or ſell or diſpoſe of any timber, ſtone, or other materials, unleſs a licence in writing for the ſale of ſuch materials, or for let-

ting to hire such team, be first obtained from the trustees; he shall forfeit 10 l. and be incapacitated to be employed as surveyor. *s.* 36.

Proportioning the statute duty between several turnpike roads.

Where there are two or more turnpike roads under several acts of parliament, within the same parish, township, or place, and the statute duty directed by all such acts for the repair of such turnpike road shall exceed three days' duty in the whole; two justices at a special sessions may proportion the statute duty betwixt such turnpike roads and the other highways in such parish, township, or place, in such manner as they shall think fit, having first summoned the clerks and surveyors of the turnpike roads, and likewise the surveyor of the highways for such parish, township, or place. *s.* 32.

Agreement with persons obliged to repair by tenure or otherwise.

Whereas many persons are liable by tenure, inclosure, or otherwise, to the repair of certain highways, which having become turnpike roads are more used and occasion an increase of expence in repairing the same, which ought in some degree to be laid upon the turnpike road; the trustees of such turnpike road may agree for the repair thereof (q) with the person liable to repair the same, in such manner as they shall think fit, and contribute so much to the repair thereof out of the tolls, or out of the statute duty belonging to the same, as they shall think just and reasonable. *s.* 62.

Repair of turnpike roads diverted.

Where parts of highways or turnpike roads are turned by legal authority, to make the same nearer or more commodious, the inhabitants or other persons who were liable to the repair of the old highway, shall be liable to the repair of the new, or so much thereof as shall be equal to the burthen and expence of repairing such old highway from which they are exonerated by turning the same as aforesaid: And if the several parties interested cannot agree, the same shall be viewed by two justices and settled by them (r): and if it shall be found more convenient to fix a gross sum, or annual sum to be paid by the inhabitants or other such persons, towards the repair of the new highway, instead of fixing the part or proportion of such new highway to be repaired by them; the said justices may, with the consent of such person or persons, and of the inhabitants obtained at a vestry meeting (s) for that purpose, and also of the trustees at a public meeting, if it be turnpike road, order and direct the same accordingly. *s.* 63.

Repair of the fences where a road has been diverted.

H. 28 *G.* 3. *K.* v. *The commissioners of Llandilo district of roads.* Rule, calling on the defendants, who were

acting truſtees for the *Llandilo* diſtrict of the roads, appointed under an act 5 *G.* 3. for widening and repairing certain roads in *Carmarthenſhire*, and continued by 26 *G.* 3. to ſhew cauſe why a mandamus ſhould not iſſue, commanding them to cauſe to be repaired a wall on each ſide of the road leading through the church-yard of *Llandilofour*, in the ſaid county. In the year 1765, an ancient road leading through the town of *Llandilofour*, which went along the outſide of the church-yard, was, by an order of the truſtees, carried through the middle of the church-yard, at which time the truſtees cauſed a wall to be built, at their ſole expence, at each ſide of the road ſo diverted, which they have ever ſince repaired till within the laſt three years. By a clauſe in the act, it is enacted, "That the "truſtees ſhall apply the money raiſed by the tolls, *&c.* "in erecting gates and toll-houſes, and repairing and "widening the ſaid roads within their reſpective diſtricts, "and defraying the neceſſary coſts, charges, and ex-"pences attending the ſame, and the execution of the "ſaid act." *Bearcroft* and *Williams* ſhewed cauſe againſt the rule, and *Douglas* in ſupport thereof.——*Aſhhurſt* J. As no clauſe is inſerted in the act which throws the *onus* of repairs on the truſtees, we cannot make them liable.——*Buller* J. We cannot make the juſtices liable by implication, if the act has not expreſsly declared them to be ſo: What is meant by a road in the act, is the ſurface over which the ſubjects have a right to paſs——*Groſe* J. Suppoſe truſtees under an act of parliament make a road through private property, for which the party is entitled to ſatisfaction, the jury, in aſſeſſing the damages, muſt be taken to give him as much as will, beſides the value of the land, indemnify the party for the expence of keeping up the fences between the road and the incloſure. Rule diſcharged. *Durnf.* and *Eaſt*, 2 V. 232.

Turnpike road indicted or preſented.

When the inhabitants of any pariſh, townſhip, or place ſhall be indicted or preſented for not repairing any highway, being turnpike road, and the court ſhall impoſe a fine for the repair of ſuch road; the ſame ſhall be proportioned, together with the coſts and charges, between ſuch inhabitants and the turnpike truſtees; and the court may order the treaſurer of ſuch turnpike road to pay the ſame out of the money then in his hands, or next to be received by him, in caſe it ſhall appear to ſuch court, from the circumſtances of ſuch turnpike debts and revenues, that the ſame may be paid without endangering the ſecurity of

the creditors who have advanced their money upon the credit of the tolls. 13 G. 3. c. 84. ſ. 33.

In what caſe the ſtatute duty on turnpike roads may be diſpenſed with.

Where any turnpike road is in ſuch a ſtate and condition, that the ſtatute duty required to be performed upon the ſame, or ſome part thereof, may be diſpenſed with, and employed more conveniently for the benefit of the other publick ways within the pariſh, townſhip, or place; the juſtices, at a ſpecial ſeſſions, upon application to them made by the ſurveyor of ſuch pariſh, townſhip, or place, may ſummon the clerk and ſurveyor of the turnpike road to appear before them at ſome other ſpecial ſeſſions, and produce before them a ſtate of the revenues and debts belonging to ſuch turnpike road: And if it ſhall appear to them, that the whole or any part of the ſtatute duty may conveniently be diſpenſed with from ſuch turnpike road without endangering the ſecurities for the money advanced on the credit of the tolls; they may order (t) the whole or part of ſuch ſtatute duty to be performed upon the highways not being turnpike within ſuch diſtrict, during ſuch time as to them ſhall ſeem juſt and reaſonable. ſ. 58.

XIV. Annoyances to be removed.

Rubbiſh or other matter left upon the road.

If the ſurveyor of any turnpike road ſhall ſuffer to remain for the ſpace of 4 days, in any part thereof, within 10 feet on either ſide or the middle of the road, any poſt, heap of ſtones, rubbiſh, or earth, by which the paſſage thereof may be obſtructed or ſtrained; he ſhall forfeit 40s. 13 G. 3. c. 84. ſ. 37.

Encroaching.

If any perſon ſhall encroach by cauſing to be made any hedge, ditch, or other fence, on any turnpike road, within 30 feet from the middle thereof; or ſhall plough, harrow, or break up the ſoil of any ground, or in ploughing or harrowing the adjacent lands ſhall turn his plough or harrow on any ground within the diſtance of 15 feet from the middle thereof as aforeſaid; he ſhall forfeit 40s. to him who ſhall make information thereof: And the truſtees, or five of them, may cauſe ſuch hedge, ditch, or fence to be taken down or filled up, at the expence of the perſon to whom the ſame ſhall belong. And one juſtice, on proof thereof upon oath, may levy as well the expences of taking down ſuch hedges as aforeſaid, as the ſeveral penalties hereby impoſed, by diſtreſs. ſ. 38.

Annoyances proſecuted at the expence of the tolls.

The truſtees, or five of them, at a meeting, may, if they think fit, direct proſecution by indictment, for any nuſance upon

upon the turnpike road, at the expence of the tolls; provided that proof can be had, by confeſſion of the offender, or by one witneſs. *ſ.* 47.

XV. Side gates.

No ſide gate ſhall be erected on any turnpike road, unleſs the ſame be ordered by the truſtees at a meeting, of which 21 days' notice ſhall have been given in writing, affixed upon all the toll gates erected on ſuch roads, and alſo in ſome publick newſpaper circulated in that part of the country; ſpecifying the place where ſuch ſide gate is propoſed to be erected; and unleſs nine truſtees at leaſt, being a majority of thoſe preſent, ſhall ſign the ſaid order at ſuch meeting. 13 *G.* 3. *c.* 84. *ſ.* 34.

Provided that no perſon ſhall be liable to pay toll at any gate erected, or to be erected acroſs or on the ſide of any turnpike road, or be ſubject to any penalty for any carriage, horſe, or beaſt, which ſhall only croſs ſuch road, and ſhall not paſs above 100 yards thereon, except over ſome bridge erected at a conſiderable expence by the truſtees of ſuch turnpike road. *Id.*

But by 14 *G.* 3. *c.* 57. after reciting the above clauſe, and that the ſame takes away or leſſens the tolls of certain gates erected by the authority of former acts, and is injurious to perſons who have lent money on the ſecurity of ſuch tolls, the ſame is repealed, ſo far as affects any gate authorized to be ſet up at any place particularly mentioned in any act for repairing any road paſſed before the making of the ſaid act of 13 *G.* 3. *c.* 84.

XVI. Farming the tolls.

The truſtees of any particular turnpike act, or any 7 or more of them, at a public meeting, may let to farm the tolls, though no expreſs power to let the ſame be given by ſuch act: And whenever any tolls ſhall be let to farm, the following directions ſhall be obſerved; that is to ſay, the truſtees ſhall cauſe notice (u) to be given of the time and place for letting the ſame at leaſt one month before; by fixing the ſame upon every toll gate belonging to ſuch turnpike road, and alſo upon the market croſs of the market town neareſt to the place where the tolls are to be let, and alſo in ſome publick newſpaper circulated in that part of the country, and ſpecifying in ſuch notice the ſum which the ſaid tolls produced in the preceding year,

clear of the ſalary for collecting the ſame, (in caſe any hired collector was appointed,) and that they will let ſuch tolls by auction to the beſt bidder, on his producing ſufficient ſureties for payment of the money weekly or quarterly as ſhall be required by the truſtees; and that they will be put up at the ſum which they were let for, or did produce, in the preceding year, clear of the ſalary of the collector: And the truſtees ſhall provide a glaſs, with ſo much ſand in it as will run from one end of it to the other in one minute; which glaſs ſhall be ſet upon a table, and immediately after every bidding the glaſs ſhall be turned; and as ſoon as the ſand is run out, it ſhall be turned again; and ſo for 3 times, unleſs ſome other bidding intervenes: And if no other perſon ſhall bid, until the ſand ſhall have run through the glaſs for 3 times; the laſt bidder ſhall be the farmer of the tolls. And if no bidder ſhall offer, the truſtees may appoint a collector, or fix ſome future day for the letting thereof as aforeſaid, and in that caſe may put them up at ſuch ſum as they ſhall think fit. And if the farmer of the tolls ſhall take a greater or leſs toll than he ought to do, he ſhall forfeit 5 l. and alſo the contract, if the truſtees ſhall think fit to vacate the ſame: And every other gatekeeper, who ſhall take a greater or leſſer toll than as aforeſaid, ſhall forfeit 40 s. 13 *G.* 3. *c.* 84. *ſ.* 31.

XVII. Mortgagee to account.

Every mortgagee, that ſhall have taken poſſeſſion of the toll gate or bar, ſhall, within fourteen days after notice given to him in writing from the truſtees or any five of them, render upon oath, to be adminiſtered by any truſtee, an exact account in writing of all money received by him or by any other to his uſe, at ſuch toll gate or otherwiſe, and what he hath expended in keeping or repairing the ſame. And if he ſhall neglect to render ſuch account, he ſhall, on conviction in a ſummary manner before one juſtice, forfeit for every omiſſion the ſum of 10 l. to the uſe of the road. 13 *G.* 3. *c.* 84. *ſ.* 52.

And if the mortgagee ſhall keep poſſeſſion, after he hath received the full ſum due to him, with intereſt and coſts; he ſhall forfeit double the ſum that he ſhall have received over and above what was due to him, with treble coſts: To be recovered by the truſtees, or by their clerk or treaſurer, in any of his majeſty's courts of record; to be applied to the uſe of the roads. *ſ.* 53.

XVIII. Power of leſſening the tolls.

Where any turnpike road ſhall be ſufficiently or in a great degree repaired, and the greateſt part of the money borrowed upon the credit thereof hath been paid; the truſtees, or 7 of them, at a meeting for that purpoſe, of which one kalendar month's notice ſhall be given in writing, to be affixed on all the turnpike gates upon ſuch road, and in ſome publick newſpaper circulated in that part of the country, may leſſen the tolls during ſuch time as they ſhall think proper. 13 *G.* 3. *c.* 81. *ſ.* 29.

Provided, that where the whole money borrowed on the credit of the tolls ſhall not have been diſcharged, no ſuch toll ſhall be leſſened without the conſent of the perſon or perſons entitled to five ſixths of the money remaining due upon ſuch reſpective tolls. *ſ.* 30.

XIX. Demoliſhing gates and doing other damage.

Deſtroying gates or engines.

1. If any perſon ſhall, either by day or night, wilfully or maliciouſly, pull down, pluck up, throw down, level or otherwiſe deſtroy, any turnpike gate, poſt, rail, wall, chain, bar, or other fence, ſet up to prevent paſſengers from paſſing without paying toll; or any houſe erected for the uſe of ſuch turnpike gate; or any crane, machine, or engine, for weighing carriages; or ſhall reſcue any perſon lawfully in cuſtody for any of the ſaid offences: he ſhall be guilty of felony, and tranſported for 7 years, or committed to priſon for any time not exceeding 3 years, at the diſcretion of the judge before whom the offender ſhall be tried. And the indictment for ſuch offence may be inquired of, heard, and determined in any adjacent county. 13 *G.* 3. *c.* 84. *ſ.* 42. And the hundred ſhall anſwer damages, as in caſes of robbery. *ſ.* 43.

If the truſtees ſhall erect a gate where they have no power; the juſtices in ſeſſions, upon complaint, may hear and determine the ſame in a ſummary way, and order the ſheriff to remove it. *ſ.* 51.

Deſtroying direction poſts, blocks, mile ſtones, or parapets of bridges.

2. Where ſeveral highways meet, the truſtees ſhall cauſe the ſurveyor to erect a ſtone or poſt, with an inſcription thereon in large letters, containing the name of and diſtance from the next market town or towns or other conſiderable place or places to which the ſaid highways reſpectively lead; and alſo, at the ſeveral approaches or entrances to ſuch parts of any highways as are ſubject to deep and dangerous floods, graduated ſtones or poſts, de-

noting the depth of water in the deepeſt part thereof, and likewiſe ſuch directions, poſts, or ſtones, as the truſtees ſhall judge neceſſary for the guiding of travellers in the beſt and ſafeſt tract thro' the ſaid floods or waters; and alſo ſhall order the ſurveyor to erect mile ſtones or poſts upon ſuch turnpike road, with proper inſcriptions and figures thereon, denoting the names and diſtances from the principal towns or places on each reſpective road. 13 G. 3. c. 84. ſ. 41.

And if any perſon ſhall wilfully or wantonly pull down, obliterate, or deface any mile ſtone or poſt, graduated or direction poſt or ſtone; or ſhall pull up, cut down, remove, or damage any poſt, block, or ſtone fixed in the ground for ſecuring any horſe cauſeway or foot cauſeway, on the ſide of any turnpike road; or dig or cut down any bank of earth caſt up for the ſaid purpoſe; or ſhall break, damage, or throw down the ſtones, bricks, or wood fixed upon the parapets or battlements of bridges: he ſhall, on conviction before one juſtice, upon view, or by the oath of one witneſs, forfeit not exceeding 5l. nor leſs than 10 s.; and in default of payment, ſhall be committed to the houſe of correction to be whipped and kept to hard labour, not exceeding one calendar month, nor leſs than 7 days, unleſs the ſame be ſooner paid. ſ. 39.

XX. Penalty of evading the tolls, or obſtructing the execution hereof.

Unloading goods.

1. If any perſon ſhall unload any goods before they come to the turnpike gate or engine; or ſhall lay upon ſuch carriage, after it ſhall have paſſed the gate or engine, any goods taken from any horſe, cart, or other carriage, belonging to, or hired or borrowed by the ſame waggoner or driver, in order to avoid the payment of the reſpective additional tolls:

Or if any perſon ſhall ſo unload, in order to carry conſiderable quantities of goods thro' any turnpike gate in one and the ſame day; and thereby pay leſs toll at ſuch gate, than would have been paid if ſuch goods had not been ſo unloaden:

He ſhall on conviction before one juſtice, on the oath of one witneſs, forfeit 5l. to be levied upon the goods of the owner; and the driver, not being the owner, ſo offending, and being convicted thereof as aforeſaid, ſhall be committed to the houſe of correction for the ſpace of one month. 13 G. 3. c. 84. ſ. 10.

2. If

2. If the owner or driver ſhall turn out of the road, in order to avoid weighing or paying the toll, and ſhall afterwards return and proceed upon the road; he ſhall, on conviction before one juſtice, by the oath of one witneſs, forfeit, if he be the owner, not exceeding 5l. nor leſs than 20s.; if he be the driver, and not the owner, any ſum not exceeding 50s. nor leſs than 10s. 13 G. 3. c. 84. ſ. 11. Turning out of the road.

3. If any perſon ſhall take off any horſe or other beaſt of draught from any waggon or other carriage, or cauſe the diſtance of the wheels to be altered before the ſame ſhall come to the gate, with intention to avoid the toll or any forfeiture or penalty; he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit 5l. ſ. 17. Taking out horſes.

4. If any perſon ſhall take the benefit of any exemptions fraudulently; he ſhall forfeit not exceeding 5l. nor leſs than 40s. ſ. 28. Taking the benefit of exemptions fraudulently.

If any perſon ſhall reſiſt or make forcible oppoſition againſt any perſon employed in the due execution of this act, or of any particular turnpike act;—or ſhall aſſault any collector of the tolls in the execution of his office;—or ſhall paſs thro' any gate, rail, chain, or fence, without paying toll; or ſhall hinder or attempt to prevent or obſtruct any perſon in meaſuring the wheels of any carriage;—or make any reſcue of cattle or other goods diſtrained;—or if the conſtable ſhall refuſe or neglect to execute any juſtice's warrant; he ſhall forfeit not exceeding 10l. nor leſs than 40s. to be paid to the ſurveyor for the uſe of the turnpike road; and if not forthwith paid or ſecured, he ſhall be committed to the common gaol or houſe of correction for any time not exceeding 3 months, unleſs the forfeiture ſhall be ſooner paid. ſ. 75. Making forcible oppoſition, or paſſing through any gate without paying the tolls, &c.

XXI. Levying and application of forfeitures.

All penalties and forfeitures by this act impoſed, and all coſts and charges to be allowed and ordered by authority of the ſame, the manner of levying and recovering whereof is not hereby otherwiſe particularly directed, ſhall be levied by diſtreſs and ſale of the goods of the offender, or of the perſon ordered to pay the ſaid coſts reſpectively, by warrant of one juſtice, on conviction (a. b. c. d. e. f. g.) of the offender by confeſſion or oath of one witneſs, or upon ſuch order made as aforeſaid: the ſame to be paid half to the informer, and half to the ſurveyor for the uſe

of the turnpike road, unleſs otherwiſe particularly directed. And in caſe ſuch diſtreſs cannot be found, and ſuch penalties and forfeitures, or the ſaid coſts and charges, ſhall not be forthwith paid; ſuch juſtice ſhall commit the offender, or perſon liable to pay the ſame reſpectively, to the common gaol or houſe of correction for any time not exceeding 3 months, unleſs the ſaid penalty, forfeiture, coſts, or charges ſhall reſpectively be ſooner paid. 13 G. 3. c. 84. ſ. 76.

Who may be witneſſes.

And any inhabitant of any pariſh, townſhip, or place where the offence ſhall be committed, may be a witneſs, notwithſtanding his being an inhabitant. ſ. 74.

What juſtices may act.

And any juſtice may act in the execution hereof, notwithſtanding he may be a creditor or truſtee. *Id.*

And if the offender live out of the juriſdiction of the juſtice, any juſtice of the limit where the ſaid perſon ſhall inhabit ſhall, on requeſt to him made, and a true copy of the conviction for the penalty or forfeiture, or of the order for the payment of coſts or charges, being produced and proved before him upon oath, cauſe the ſaid penalty or forfeiture, or the ſaid coſts or charges, to be levied by diſtreſs; and if no ſufficient diſtreſs can be had, ſhall commit ſuch perſon to the common gaol or houſe of correction of ſuch limit, for the time and in the manner aforeſaid. ſ. 76.

When the warrant of diſtreſs ſhall iſſue.

Provided, that no warrant of diſtreſs, unleſs otherwiſe directed by this act, ſhall be iſſued for levying any penalty or forfeiture, coſts, or charges, until ſix days after the offender ſhall have been convicted, and an order made and ſerved upon him for payment thereof. ſ. 77.

Surveyor, &c. being the informer.

Provided alſo, that every penalty or forfeiture that ſhall be recovered on the information of the ſurveyor, or toll-taker, or other perſon employed by the truſtees, and receiving ſalaries or rewards for their ſervices, and not otherwiſe directed by this act, ſhall be applied to the amending of the ſaid turnpike roads reſpectively, and to no other uſe. ſ. 78.

Fraudulent convictions.

And to prevent fraudulent convictions, the juſtice before whom any information ſhall be brought, ſhall, in caſe any other information or conviction ſhall be ſet up by way of defence, proceed to examine into the real merits of ſuch information, proceeding, or conviction; and if it ſhall appear that the ſame was not done to recover and apply the penalty or forfeiture for the real ends for which it was intended, but to favour the offender, ſuch information or

conviction

conviction ſhall be deemed to be fraudulent, and the juſtice may proceed to convict as if no ſuch information or conviction had been made. *ſ.* 48.

And every proſecutor or informer may, at his option, ſue for and recover any forfeiture or penalty impoſed by this or any other act for erecting turnpikes or repairing turnpike roads, in manner following: *viz.* If the ſame ſhall not amount to 40s. it ſhall be recoverable only by information before a juſtice; and if it ſhall amount to 40s. or upwards, it may be recovered either before a juſtice as aforeſaid, or by action of debt in any of his majeſty's courts of record; in which it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of —— being forfeited by an act paſſed in the 13th year of his preſent majeſty, intituled, *An act to explain, amend, and reduce into one act of parliament the general laws now in being, for regulating the turnpike roads in that part of* Great Britain *called* England, *and for other purpoſes:* And the plaintiff, if he recovers, ſhall have full coſts. Provided, that ten days' notice in writing be given to the party offending, previous to the commencement of the action; and that the ſame be brought within one kalendar month after the offence committed. *ſ.* 79.

Irregularity in the proceedings.

Where any diſtreſs ſhall be made for any ſum to be levied by virtue of this act, the diſtreſs ſhall not be deemed unlawful, nor the party making the ſame be deemed a treſpaſſer on account of any defect or want of form in the proceedings; nor ſhall the party diſtraining be deemed a treſpaſſer *ab initio*, on account of any irregularity which ſhall be afterwards done by the party diſtraining; but the perſon aggrieved by ſuch irregularity may recover ſatisfaction for the ſpecial damage in an action on the caſe. *ſ.* 80.

And the plaintiff ſhall not recover in any action for ſuch irregularity, if tender of ſufficient amends ſhall be made before the action brought; and if no ſuch tender hath been made, the defendant may by leave of the court, at any time before iſſued joined, pay into court ſuch ſum as he ſhall ſee fit; whereupon ſuch proceedings ſhall be had as in other actions where the defendant is allowed to pay money into court. *ſ.* 81.

And no proceedings upon this act ſhall be quaſhed or vacated for want of form, or removed by certiorari or other proceſs into any of his majeſty's courts of record at *Weſtminſter*. *ſ.* 82.

If

Appeal.

If any perſon ſhall think himſelf aggrieved by any thing done by any juſtice in purſuance of this act, except under the particular circumſtances hereafter mentioned, and for which no particular method of relief is herein otherwiſe appointed; he may appeal to the general quarter ſeſſions, giving notice in writing (h) to the juſtice of his intention to bring ſuch appeal, and of the matter thereof, within ſix days after the cauſe of ſuch complaint aroſe, and within four days after ſuch notice entering into recognizance before a juſtice with one ſufficient ſurety, conditioned to try ſuch appeal at, and abide the order of, and pay ſuch coſts as ſhall be awarded by the juſtices at ſuch quarter ſeſſions. And the juſtice having received notice of ſuch appeal, ſhall return all proceedings before him touching the matter of ſuch appeal, to the ſaid ſeſſions, on pain of 5l. And the juſtices at ſuch ſeſſions, on proof of the notice given, and of the entering into ſuch recognizance, ſhall hear and determine the appeal in a ſummary way, and award coſts to either party as they ſhall ſee cauſe, to be levied and recovered as herein-before directed. *ſ.* 82.

Provided, that no appeal ſhall be made againſt any conviction for any penalty of forfeiture, unleſs the perſon convicted ſhall, at the time of the conviction if he ſhall be then preſent, if not, within ſix days after, give notice of his intention to appeal, and at the ſame time enter into recognizance or give ſecurity with ſufficient ſureties, to pay ſuch penalty or forfeiture, in caſe the conviction ſhall be affirmed upon the appeal: And on his giving ſuch ſecurity, the further proceedings for ſuch penalty or forfeiture ſhall be ſuſpended, until the appeal ſhall be heard and determined. *ſ.* 83.

Limitation of actions.

If any action ſhall be commenced againſt any perſon, for any thing done in purſuance of this act, the ſame ſhall be commenced within three kalendar months after the fact committed, and in the county where the defendant reſides or the fact was done: And the defendant may plead the general iſſue, and if he prevails in the action, he ſhall have treble coſts. *ſ.* 85.

Forms in the act to be uſed.

The forms of proceedings under this title are ſpecially directed by the ſeveral acts, to be uſed upon all occaſions, with ſuch additions or variations only as may be neceſſary to adapt them to the particular exigences of the caſe: And no objection ſhall be made, or advantage taken, for

want of form in any ſuch proceedings. So that it is neceſſary only in this place to inſert the ſaid forms as they ſtand in the acts: unto which are added divers forms of *indictments*, and one other precedent of an *order* for payment of a penalty or forfeiture previous to the warrant of diſtreſs.

A. Warrant for making liſts of perſons qualified to be ſurveyors.

Middleſex. To the conſtables, &c.

IN order to carry into execution an act made in the 13*th year of the reign of his majeſty king* George *the third, for the amendment and preſervation of the public highways, you are hereby ſeverally required forthwith to give public notice to the churchwardens, ſurveyors of the highways, and houſeholders, being aſſeſſed to any parochial or public rate within your reſpective liberties, that they do aſſemble on the* 22*d day of* September *next, at the church or chapel, or if there ſhall be no church or chapel, then at the uſual place of public meetings within their reſpective liberties, at the hour of* 11 *in the forenoon; and that the major part of them ſo aſſembled do make a liſt of the names of at leaſt ten perſons living therein, who each of them have an eſtate in lands, tenements, or hereditaments, lying within the ſame, in their own right, or in the right of their wives, of the value of* 10*l. by the year; or a perſonal eſtate of the value of* 100*l.; or are occupiers or tenants of houſes, lands, tenements, or hereditaments, of the yearly value of* 30*l.: And if there ſhall not be ten perſons having ſuch qualifications, then that they do inſert in ſuch liſt the names of ſo many ſuch perſons as are ſo qualified together with the names of the moſt ſufficient and able inhabitants not ſo qualified, as ſhall make up the number ten, if ſo many can be found, if not, ſo many as ſhall be there reſident, to ſerve the office of ſurveyor of the highways. And you are alſo ſeverally required, within three days after making the ſaid liſt, to deliver a copy thereof to one of the juſtices of the peace of the ſaid —— living in or near the ſame* [pariſh, &c.] *and alſo to give perſonal notice to, or cauſe notices in writing to be left at the places of abode of the ſeveral perſons contained in ſuch liſt, informing them of their being ſo named, to the intent that they may ſeverally appear before the ſaid juſtices at their ſpecial ſeſſions to be holden at —— within the ſaid ——*

on

on the —— day of ——— now next enſuing, at the hour of —— in the forenoon of the ſame day, to accept ſuch office, if they ſhall be appointed thereto, or to ſhew cauſe, if they have any, againſt their being appointed. And you are likewiſe to give notice to the preſent ſurveyors of the highways within your reſpective liberties, to appear at the ſame time and place, and produce ſuch accounts and liſts before the ſaid juſtices as are required by the ſaid act. And you and each of you are perſonally to appear before the ſaid juſtices, at their ſaid ſpecial ſeſſions, and then and there ſeverally deliver to the ſaid juſtices the ſaid original liſt or liſts taken within your reſpective liberties, and give an account of the execution of this our precept. Given under our hands and ſeals, the ——— day of ——— in the year of our Lord ——.

B. Liſt of perſons to be returned to the juſtices.

A LIST of the ſeveral perſons named for ſurveyors of the highways for the [inſert the name of the pariſh, townſhip, or place] *at a meeting held at ——— in the ſaid ——— the —— day of —— 1774.*

A B.
C. D. &c.

[This is to be added when a particular perſon is recommended]—*We whoſe names are ſubſcribed, being two parts in three of the perſons aſſembled at the meeting aforeſaid, do agree in the choice of* A. S. *as a fit perſon to ſerve the office of ſurveyor for the ——— of ——— aforeſaid, and in the allowance to him —— for his trouble in executing the ſame for the year enſuing; and we do recommend the ſaid* A. S. *to the juſtices for their appointment accordingly.*]

C. Notice to the perſons in the liſt.

A. B. take notice, That you was at a meeting held at ——— on the ——— day of ——— named as one of the perſons to be returned to the juſtices as fit to ſerve the office of ſurveyor for the ſaid —— for the year enſuing; and if you have any cauſe to ſhew why you ſhould not be appointed to ſerve ſuch office, you muſt make the ſame appear before the juſtices, at their ſpecial ſeſſions to be holden at ——— on the ——— day of ——— next.

A. C. Conſtable, &c.

D. Appoint-

D. Appointment of a ſurveyor.

Middleſex. { At a ſpecial ſeſſions held at ——— in the hundred of ——— by juſtices of the peace for the ſaid county, acting within the ſaid hundred, on the ——— day of ——— 1774.

WE do hereby nominate and appoint A. S. *of* ——— *in the ſaid hundred, ſurveyor of the highways within the ſaid* ——— *for the year enſuing: And you the ſaid* A. S. *are faithfully and truly to execute the ſaid office of ſurveyor according to the directions of the ſtatute paſſed in the thirteenth year of the reign of his majeſty king* George *the third,* "*For the amendment and preſervation of the highways;*" *an abſtract of the material parts of which ſtatute is hereunto annexed. Given under our hands and ſeals the day and year above mentioned.*

If a ſurveyor is appointed with a ſalary, then after the words *year enſuing*, add, *And we do allow the ſaid* A. S. *the ſalary of* ——— *for his trouble.*

E. Appointment of an aſſiſtant to the ſurveyor.

Middleſex. { At a ſpecial ſeſſions held at ——— in the hundred of ——— by juſtices of the peace for the ſaid county, acting within the ſaid hundred, on the ——— day of ——— 1774.

WE do hereby nominate and appoint A. S *a ſubſtantial inhabitant of the* ——— *of* ——— *in the ſaid hundred, aſſiſtant to* A. B. *whom we have appointed ſurveyor of the highways for the ſaid* ——— *And you the ſaid* A. S. *are, to the beſt of your ſkill and judgment, to aſſiſt the ſaid ſurveyor, whenever requeſted by him, in calling in and attending the performance of the ſtatute duty, in collecting the compoſitions, fines, penalties, and forfeitures, and in making and collecting the aſſeſſments, and in making out and ſerving the notices authorized by the act paſſed in the thirteenth year of the reign of his majeſty king* George *the third,* "*For the amendment and preſervation of the highways,*" *and in ſuch other matters and things as ſhall be reaſonably required of you by the ſaid ſurveyor, in the execution of his office of ſurveyor, purſuant to the ſaid act; and you are juſtly and truly to account with, and pay to the ſaid ſurveyor or to his order, the money which ſhall come*

to your hands by the means aforeſaid. Given under our hands and ſeals, the day and year above-mentioned.

F. Complaint to two juſtices where a highway lies in two pariſhes. (*a*)

County of Weſtmorland. } *AT a petty ſeſſions holden before* J. P. *and* K. P. *two of his majeſty's juſtices of the peace for the ſaid county, this —— day of ——, J. S. one of the ſurveyors of the highways of the pariſh of* A. *came before the juſtices aforeſaid, and gave them to be informed, That there is in the ſaid county, a certain common highway leading from* M. *to* N. *and that there is a certain part of the ſaid highway, that is to ſay, ſo much thereof as lies between a certain place called* C. *and a certain other place called* D. *being in length* [as the caſe may be, *one ſide of which laſt-mentioned part of the ſaid highway adjoining to the pariſh of* A. *lies within the ſaid pariſh of* A. *and is to be, and of right ought to be, repaired by the ſaid pariſh of* A. *and that the other ſide of the ſame part of the ſaid highway adjoining to the pariſh of* B. *lies within the pariſh of* B. *and is to be, and of right ought to be, repaired by the ſaid pariſh of* B. *and ſtating that the repair of ſuch part of the ſaid highway is very inconvenient to the pariſhes aforeſaid, and the want thereof detrimental to the publick: and therefore praying, that ſuch part of the ſaid highway may be allotted and apportioned for the repair thereof, by the juſtices aforeſaid, to the ſaid ſeveral pariſhes of* A. *and* B. *in the manner directed by an act, paſſed in the* 34*th year of the reign of king* George *the third, intituled,* An act, &c.

J. S.
One of the ſurveyors of the highways for the pariſh of A.

The above application was made to us the day and year firſt above written.

G. Summons, to be ſubjoined to a copy of the above information.

County of Weſtmorland. } To the ſurveyors of the highways of the pariſh of *B.* in the ſaid county, any or either of them.

WHEREAS a certain information has been given unto us J. P. *and* K. P. *two of his majeſty's juſtices of the*

(*a*) Theſe forms are copied from thoſe in the act.

peace

peace for the ſaid county, by J. S. *one of the ſurveyors of the highways of the pariſh of* A. *in the ſaid county, a true copy whereof is above written: Theſe are, in his majeſty's name, to ſummon you, any or either of you, to appear before us at —— in the ſaid county, on the —— day of ———, at —— to ſhew cauſe (if any) why an allotment and apportionment of the highway therein mentioned, ſhould not be made, according to the proviſions of the act referred to in the ſaid information: Herein fail not. Given under our hands the —— day of ———.*

J. P.
K. P.

H. Final Order and Adjudication, to be filed with the clerk of the peace.

WHEREAS, &c. [here ſtate the original application; the ſummons; the appearance; and that the parties were heard, or, their non-appearance]. *Now we the juſtices aforeſaid, having fully heard and underſtood the premiſes, do declare, adjudge, and order, That the ſaid highway ſhall be divided in the following manner; (that is to ſay) that at the diſtance of ———, meaſuring from the place called* C. *there ſhall be erected certain poſts or ſtones* E. *and* F. *on each ſide of the ſaid highway; and the whole of the ſaid highway, from the place called* C. *to ſuch poſts or ſtones, ſhall be from time to time, and at all time hereafter, repaired by the pariſh of* A. *and the whole of the ſaid highway from ſuch poſts or ſtones to the place called* D. *ſhall from time to time, and at all times hereafter, be repaired by the pariſh of* B. *In witneſs whereof we have hereunto ſet our hands and ſeals, this ——— day of ———.*

J. P. (L. S.)
K. P. (L. S.)

I. Notice of the time and place for compoſitions.

NOTICE is hereby given, That all perſons who are inclined to compound for their ſtatute duty within the —— of ——— are hereby required to ſignify their intention to compound for the ſame to A. S. *the ſurveyor of the highways for the ſaid ——— at the houſe of ——— of ——— on the ——— day of this inſtant* November, *between the hours of ——— and ———. And they are hereby required at the ſame time, or within the ſpace of one month after, to pay their compoſition money to the ſaid ſurveyor: And alſo, that all perſon*

ſons who are liable to pay money for the lands, tenements, woods, tithes, hereditaments, which they occupy, or in lieu of their duty within the ſaid —— according to the act made in the thirteenth year of his majeſty king George *the third "For the amendment and preſervation of the highways," are required to pay the ſame to the ſaid ſurveyor, on the day, or within the time aforeſaid. Dated this —— day of* November 1774.

A. S. Surveyor.

K. Notice to perform ſtatute duty.

A. B. you are hereby required to ſend (as the caſe ſhall be) *to —— within the —— of —— on the —— and —— days of —— next at —— o'clock in the morning of each day, in order to perform ſuch duty upon the highways within the ſaid —— as ſhall be required by the ſurveyor, purſuant to the direction of the act paſſed in the 13th year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways." Dated this —— day of —— 1774.*

If perſonal labour is required, then ſay, *You are hereby required by yourſelf or a ſufficient labourer, to attend at —— within the,* &c.

L. Notice from the ſurveyor to prune hedges, ſcour ditches, and remove nuſances.

To C. D. of ——

IN purſuance of the directions given by the act paſſed in the 13th year of the reign of his majeſty king George *the third "For the amendment and preſervation of the highways," I A. S. ſurveyor of the highways for the —— of —— do hereby give you notice, forthwith to cut, prune, and plaſh the hedges, and cut or prune the trees, and to open, cleanſe, and ſcour the ſeveral ditches and watercourſes, belonging to you, in or near the highway lying between —— and —— to the intent that the water may be drained from the ſaid highway, and that the ſun and wind may not be excluded from ſuch highway, to the prejudice thereof:*

[Or, *forthwith to remove the dung, timber, ſtone,* &c. *placed by you in a certain part of the king's highway, lying between —— and —— in the —— of —— to the obſtruction and annoyance of the ſaid highway.*]

Dated this —— day of —— 1774. A. S.

M. Allow-

M. Allowance of charges to the ſurveyor for removing the ſame.

Middleſex. *WHEREAS complaint hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, by the oath of* A. S. *ſurveyor of the highways for the* —— *of* —— *in the ſaid county, that* A. O. *of* —— *having had due notice to cut and prune his hedges, and cleanſe and ſcour his ditches and watercourſes, within or adjoining to the public highway between* —— *and* —— *in the ſaid* —— *of* —— *hath neglected to do the ſame within the time required by ſuch notice, and that the ſaid* A. S. *hath cauſed the ſame reſpectively to be cut, pruned, cleanſed and ſcoured, purſuant to the directions of the act paſſed in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways," and hath expended therein the ſum of* —— *as appears by an account now produced to me, which I think a reaſonable charge, and do therefore allow the ſame, and hereby order the ſaid* A. O. *to pay the ſaid ſum of* —— *to the ſaid* A. S. *within ſix days from the time of his being ſerved with this order. Given under my hand and ſeal this* —— *day of* —— 1774.

N. Order of a juſtice to make new drains.

Middleſex. { To A. S. of —— ſurveyor of the highways for the —— of ——.

WHEREAS complaint hath been made unto me J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that the ditch, gutter, or watercourſe, for conveying the water from the highway at* —— *in the* —— *of* —— *in the ſaid county, is not ſufficient for that purpoſe, and that the cleanſing and opening the ſame will not effectually carry off the ſaid water, but that the ſaid highway may be effectually drained, and the water carried off, by making a new ditch or drain through the lands or grounds of* —— *lying near the ſame, for the length of* —— *yards and the breadth of* —— *feet; and the ſaid* —— *having been duly ſummoned to appear before me, to ſhew cauſe, if he had any, why the ſaid ditch or drain ſhould not be made, and the ſaid* —— *not appearing* (or, *not ſhewing ſufficient cauſe againſt the ſame*), *and it appearing to me that ſuch ditch or drain is neceſſary, I do hereby order and require you to enter into and upon the ſaid*

lands of the said —— *and there make or cause to be made a new ditch or drain, of the length and breadth aforesaid, and of a convenient depth, making or tendering sufficient satisfaction to the said* —— *for the damages to be done thereby, within one kalendar month after the same shall be so made; such damages to be settled and ascertained in manner directed by the act passed in the thirteenth year of the reign of his majesty king* George *the third "For amendment and preservation of the highways." Given under my hand this* —— *day of* —— 1774.

O. Precept for erecting guide posts or water marks.

Middlesex. { At a special sessions held at —— for the hundred of —— in the said county, before justices of the peace for the said county, acting within the said hundred, on the —— day of —— 1774.

To the surveyor of the —— of —— in the said hundred.

YOU are hereby required forthwith to erect, or cause to be erected, in the most convenient place upon the highway lying between —— *and* —— *within your liberty, where the roads cross or branch out, a guide post, with proper inscriptions painted on both sides thereof, in large legible letters, denoting the towns of* —— *and* —— (or other places as the justices shall think proper); *and you are allowed to charge the reasonable expences of providing and erecting the same in your accounts.*

Where graduated stones or posts are necessary to prevent accidents from water, it may be varied thus:—*In the most convenient place upon the highway, at the approach or entrance on each side of the ford or water called* —— *at* —— *within your liberty, graduated posts, denoting the depth of water in the deepest part thereof, through which such highway passes* ——

P. Order for widening or diverting an highway.

Middlesex. *WE* —— *two of his majesty's justices of the peace for the said county, acting within the hundred of* —— *within the said county, having, upon view, found that a certain part of the highway between* —— *and* —— *in the* (parish, &c.) *of* —— *in the said hundred, for the length of* —— *yards or thereabouts, and particularly described in the plan hereunto annexed, is for the greatest part thereof*

thereof narrow, but may be conveniently enlarged and widened, by adding thereto from the lands and grounds of —— and —— of the length of ——— yards or thereabouts, and of the breadth of — feet or thereabouts, particularly described in the plan hereunto annexed, which we think will be much more commodious to the publick; we do hereby order, that the said highway be widened and enlarged thro' the lands aforesaid; and that the surveyor of the highways for the —— of —— where the said old highway lies, do forthwith proceed to treat and make agreement with the said ——— and —— for the recompence to be made for the said ground, and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects, as are warranted and prescribed by the statute made in the thirteenth year of the reign of his majesty king George *the third "For the amendment and preservation of the highways:" And in case such agreement shall be made as aforesaid, we do order an equal assessment, not exceeding the rate of sixpence in the pound, to be made, levied, and collected upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the said ——— of ——— and that the money arising thereupon be paid and applied in making such recompence and satisfaction as aforesaid, pursuant to the directions of the said act.*

If the road is to be turned, then, after the words, *is for the greatest part thereof narrow*, say, *and cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the same; and having viewed a course proposed for the said new highway through the lands and grounds, &c.* And afterwards, instead of the words, *be widened and enlarged*, say, *be diverted and turned.*

Q. Certificate to the sessions thereupon.

Middlesex. { To the justices of the peace, at their general quarter sessions to be held at ——— in the said county, the —— day of —— 1774.

WE the within named A. B. *and* C. D. *do hereby certify to the said court of quarter sessions, that we made and signed the within order; and that, with our approbation, and by our direction, the said surveyor hath treated with the said —— and ——— for the said lands required for the purposes aforesaid, but was not able to make any agreement for that purpose with them or either of them; and that he tendered to the said ——— the sum of ——— and to the said ———*

the ſum of ——— as a recompence for the ſaid ground, and for making the ſaid ditches and fences; which they, and each of them, refuſed to receive.

R. Order for ſtopping up an old way.

WE whoſe names are ſubſcribed, being the juſtices of peace who have viewed the ſeveral highways deſcribed in the plans hereunto annexed, and made an order for diverting the old highway; and being ſatisfied that the new highway therein deſcribed is properly made, and fit for the reception of travellers, do hereby order the ſaid old highway, being of the length of ——— yards and of the breadth of —— feet upon a medium, as appears by the ſaid plan, to be ſtopped up, and the land and ſoil thereof to be ſold by the ſaid ſurveyor to ——— whoſe land adjoins thereto, if he ſhall be willing to purchaſe the ſame, for the full value thereof; if not to ſome other perſon or perſons, for the full value thereof.

This is to be added, if needful; and to be varied as circumſtances may require: —— *Reſerving nevertheleſs to ——— a free paſſage for perſons, horſes, cattle, and carriages, through the land and ſoil of the ſaid old highway to and from the* (land, &c.) *belonging to him, called —— according to his ancient uſage thereof.*

S. Order for turning a highway thro' any perſon's lands, with the owner's conſent.

Middleſex. *WE ——— and ——— eſquires, two of his majeſty's juſtices of peace for the ſaid county, at a ſpecial ſeſſions held at —— in the hundred of —— in the ſaid county, on the —— day of —— 1774, having upon view found, that a certain part of a highway within the —— of ——— in the ſaid hundred, lying between ——— and —— for the length of ——— yards or thereabouts, and particularly deſcribed in the plan hereunto annexed, may be diverted and turned ſo as to make the ſame nearer* [or, *more commodious*] *to the publick; and having viewed a courſe, propoſed for the new highway, in lieu thereof, thro' the lands and grounds of ——— of the length of ——— yards or thereabouts, and of the breadth of ——— feet or thereabouts, particularly deſcribed in the plan hereunto annexed, and having received evidence of the conſent of the ſaid ——— to the ſaid new highway being made thro' his lands herein before deſcribed, by writing under his hand and ſeal; we do hereby order, that the ſaid highway be diverted and turned through the lands aforeſaid; and we do order an equal*

equal assessment, not exceeding the rate of 6 *d. in the pound, to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the said —— of —— and that the money arising thereupon be paid and applied in making recompence and satisfaction for the same unto the said ——*

T. Form of such consent.

I A. B. *of —— in the county of —— being owner of the lands described in the plan hereunto annexed, through which part of a certain highway, lying between —— and —— is intended to be diverted and turned, in consideration of the sum of —— to be paid to me for the said land and the soil thereof* [or as the case shall be], *do hereby consent to the making and continuing such new highway through my said lands. Given under my hand and seal, this —— day of ——* 1774.

U. Notice of application to be made for a general assessment.

Middlesex. *NOTICE is hereby given, that application will be made to the justices of the peace acting for the hundred of —— in the said county, at their special sessions to be held at —— in the said hundred, on the —— day of ——* 1774, *for an equal assessment to be made, not exceeding —— in the pound, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments within the —— of —— for the use and benefit of the highways within the said —— Dated this —— day of ——* 1774.

A. B. Surveyor.

V. Order for such general assessment.

Middlesex. { At a special sessions for the highways, held at —— in the hundred of —— in the said county, the —— day of —— 1774, by justices of peace for the said county acting within the said hundred.

UPON application made to us by the surveyor of the highways for the —— of —— and upon evidence given upon oath before us, that the duty directed to be performed, and the money authorized to be collected and received by an act passed in the thirteenth year of the reign of his majesty king

George *the third* "*For the amendment and preſervation of the highways,*" *have been performed, applied, and expended, according to the directions of the ſaid act:*

[Or,— *upon evidence given upon oath before us, we are fully ſatisfied, that the common highways, bridges, cauſeways, ſtreets, and pavements belonging to the —— of —— are ſo far out of order that they cannot be ſufficiently amended and repaired, paved, cleanſed, and ſupported, by the means preſcribed by an act paſſed in the thirteenth year of the reign of his majeſty king* George *the third* "*For the amendment and preſervation of the highways:*"]

And it appearing to us, that notice hath been duly given of ſuch intended application, according to the direction of the ſaid act, we do hereby order, direct, and appoint, that an equal aſſeſſment, not exceeding the ſum of —— in the pound, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within the ſaid —— of —— ſhall be forthwith made by the ſaid ſurveyor, and ſhall be allowed by one juſtice of the peace for the ſaid hundred, and ſhall be collected by the ſaid ſurveyor; and that the money ſo to be aſſeſſed and collected ſhall be applied for and towards the amending, repairing, paving, cleanſing and ſupporting ſuch highways, cauſeways, ſtreets, pavements, and bridges, and for other purpoſes as directed by the ſaid act.

W. Surveyor's oath on paſſing his accounts.

I A. B. *do ſwear, that the accounts now produced and delivered by me, as ſurveyor of the highways for the —— of —— for the laſt year, are juſt and true, to the beſt of my knowledge.—So help me God.*

X. Allowance of the accounts.

October the —— 1774.

THESE accounts were examined and allowed before

——

Y. Indictment for not repairing a common highway.

Weſtmorland. *THE jurors for our lord the king upon their oath preſent, that from the time whereof the memory of man is not to the contrary, there was, and yet is, a common and ancient king's highway leading from the town of —— in the county of —— towards and unto*

the market town of —— in the county of ——, used for all the liege subjects of our said lord the king, and of his predecessors, with their horses, coaches, carts, and carriages to go, return, pass, ride, and labour at their will and pleasure, and that a certain part of the same king's common highway, situate, lying, and being in the parish of —— in the county of —— aforesaid, beginning at the place called —— and so continued towards the market town of —— aforesaid, for the length of —— feet, and being of the breadth of —— feet, on the —— day of —— in the —— year in the reign of —— and continually afterwards, until the day of the taking of this inquisition, was and yet is in great decay, for the want of due reparation and amendment of the same; so that the subjects of our said lord the king, passing and travelling through the same, with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can go, return, pass, ride and labour without great danger; to the great damage and common nusance of all the liege subjects of our said lord the king passing through that way, and against the peace of our said lord the king, his crown and dignity; and that the inhabitants of the said parish of —— in the said county of —— the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary.

Or, *that* A. O. *of —— aforesaid, gentleman, ought by reason of the tenure of his lands and tenements, situate, lying, and being at —— aforesaid in the county aforesaid, to repair and amend the said highway, when and so often as it shall be necessary.*

Indictment for not repairing an ancient horse and foot way.

Westmorland. *THE jurors for our lord the king upon their oath present, that from the time of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from —— in the county of —— to —— in the county of —— for all the liege subjects of our now lord the king, and his ancestors, on horseback and on foot, to go, return, pass, ride, labour, and drive their cattle at their will, and that a certain part of the same common highway, situate, lying, and being within the parish of —— in the county of —— aforesaid, beginning at a place called —— and so continued towards the said —— of —— in the county of —— aforesaid, of the length of —— feet, and the breadth of —— feet,*

——— *feet, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and continually afterwards, until the day of the taking this inquiſition, at the pariſh of* ——— *aforeſaid in the county aforeſaid, was, and yet is, very ruinous, miry, deep, broken, and in ſuch decay, for want of due reparation and amendment of the ſame, that the liege ſubjects of our ſaid lord the king by and through the ſame way with their horſes and cattle could not during the time aforeſaid, nor yet can go, return, paſs, ride and labour, as they ought and were wont to do, without great danger of themſelves and of their goods, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king through the ſame highway going, returning, paſſing, riding and labouring, and againſt the peace of our ſaid lord the king. And that the inhabitants of the ſame pariſh of* ——— *in the county aforeſaid, the ſame common highway, ſo as aforeſaid being in decay, ought to repair and amend, when and ſo often as it ſhall be neceſſary.*

Indictment for encroaching upon a highway, by building thereupon.

Weſtmorland. *THE jurors for our lord the king, upon their oath preſent, that* A. O. *late of* ——— *carpenter, the* ——— *day of* ——— *in the* ——— *year* ——— *with force and arms, at* ——— *in and upon a common highway, in a certain place commonly called* ——— *there leading from* ——— *to* ——— *by a certain building there containing in length* ——— *feet, and in breadth* ——— *feet, by him the ſaid* A. O. *erected and built, hath unlawfully and unjuſtly incroached, and doth yet incroach, and the building aforeſaid ſo as is aforeſaid erected and built by him the ſaid* A. O. *from the aforeſaid* ——— *day of* ——— *in the year aforeſaid, unto the day of exhibiting this information, at* ——— *aforeſaid in the county aforeſaid, with force and arms unlawfully and unjuſtly hath continued, and doth yet continue, by reaſon whereof the common highway aforeſaid hath become and is greatly ſtraitened, ſo that the liege ſubjects of the ſaid lord the king upon and through the ſame common highway aforeſaid, with their horſes, carts, and carriages, cannot go, paſs, ride and labour as they ought and were want to do, to the great and common nuſance of all the liege ſubjects of the ſaid lord the king in and through the ſaid common highway going, paſſing, riding, and labouring, and againſt the peace of the ſaid lord the king.* Trem. 196.

Indict-

Indictment for incloſing the highway.

Weſtmorland. *THE jurors for our ſaid lord the king upon their oath preſent, That whereas from the time whereof the memory of man is not to the contrary, the liege ſubjects of our ſaid lord the king had, and lawfully uſed a certain common highway at ——— in the ſaid county, in a certain place there called ——— leading from the town of ——— aforeſaid, to the town of ——— for themſelves, and their goods, without any ſtoppage or hindrance by any ditches, hedges, or other obſtacles whatſoever; nevertheleſs one* A. O. *of ——— aforeſaid, in the county of ——— aforeſaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms at ——— aforeſaid, in the county of ——— aforeſaid, in the place aforeſaid called ——— upon the common highway aforeſaid, a certain ditch and quickſet hedge did make, and the ſaid ditch and quickſet hedge ſo as aforeſaid made doth yet continue and keep; to the great ſtoppage and hindrance of the liege ſubjects of our ſaid lord the king paſſing in and through the ſaid common highway, and againſt the peace of our ſaid lord the king.*

Indictment for laying timber or other obſtructions in the highway.

Weſtmorland. *THE jurors for our lord the king upon their oath preſent, that* A. O. *late of ——— in the county aforeſaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— and on divers other days and times as well before as afterwards, with force and arms, at ——— in the ſaid county, in and upon the king's common highway there, leading from ——— unto the town of ———, divers great pieces of timber put and placed, and cauſed to be put and placed, and the ſame great pieces of timber ſo as aforeſaid put and placed from the aforeſaid ——— day of ——— in the ——— year aforeſaid, until the day of exhibiting this information, in and upon the king's common highway aforeſaid to be, lie, and remain, hath permitted and doth ſtill permit to the grievous and common nuſance of all the lieges and ſubjects of the ſaid lord the king, upon and through the king's common highway aforeſaid going, paſſing, riding and travelling, and againſt the peace of our ſaid lord the king, his crown and dignity.* Trem. 197.

Or,

Or, ——— *great quantity of dung and other filth, by reaſon whereof divers hurtful and unwholeſome ſmells from the ſaid dung and other filth did then and there ariſe, and thereby the air there became, was, and is corrupted and infected* ———.

Or, —— *cart loads of rubbiſh* —— *by reaſon whereof the ſaid highway for the whole time aforeſaid was ſtraitened and obſtructed, ſo that the liege ſubjects of our ſaid lord the king could not ſo freely paſs and repaſs about their lawful buſineſs, through the ſaid common highway there, as they ought and have been accuſtomed* ———.

Indictment for ſtopping up a watercourſe, whereby the highway is overflowed.

Weſtmorland. *THE jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at the pariſh aforeſaid, in the county aforeſaid, a certain ancient watercourſe adjoining to the king's common highway, within the ſame pariſh, leading from the town of* ——— *in the county aforeſaid, towards and unto* ——— *with gravel and other materials, unlawfully and injuriouſly did obſtruct and ſtop up; and the ſaid watercourſe, ſo as aforeſaid obſtructed and ſtopped up from the ſaid* ——— *day of* —— *in the year aforeſaid until the day of the taking of this inquiſition at the pariſh aforeſaid in the county aforeſaid, unlawfully and injuriouſly hath continued and ſtill doth continue, by reaſon whereof the rain and waters that were wont and ought to flow and paſs through the ſaid watercourſe, on the ſame day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquiſition, did overflow and remain, in the king's common highway aforeſaid, and thereby the ſame was, and yet is greatly hurt and ſpoiled; ſo that the liege ſubjects of our ſaid lord the king, through the ſame way with their horſes, coaches, carts and carriages, then and on the ſaid other days and times could not nor yet can go, return, paſs, ride, and labour as they ought, and were wont to do, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding and labouring, and againſt the peace of our ſaid lord the king.*

(a) Notice

(a) Notice for a veſtry or other publick meeting.

NOTICE is hereby given, That a veſtry or publick meeting will be held at —— on the —— day of —— next, in order to [here ſet forth the particular occaſion]. *Dated the —— day of ——* 1774.

A. C. Conſtable, &c.

(b) Preſentment by a juſtice of a road being out of repair.

Middleſex. *AT the general quarter ſeſſions of the peace of our lord the king held for the ſaid county, at —— in the ſaid county, on —— the —— day of —— in the —— year of the reign of —— before —— and —— eſquires, and others their companions, juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, J. P. eſquire, one of the juſtices of our ſaid lord the king, aſſigned for the purpoſes aforeſaid, by virtue of an act made in the 13th year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways," upon his own view* [or, if it is upon the information of the ſurveyor, then ſay, *upon information on oath to him given by A. S. ſurveyor of the highways for the —— of —— in the ſaid county*] *doth preſent, That from the time whereof the memory of man is not to the contrary, there was and yet is a certain common and ancient king's highway, leading from the town of —— in the ſaid county, towards and unto —— within the ſame county, uſed for all the king's ſubjects, with their horſes, coaches, carts and carriages, to go, return, and paſs at their will; and that a certain part of the ſame king's common highway, commonly called —— ſituate, lying, and being in the —— of —— in the ſame county, containing in length —— yards, and in breadth —— feet, on the —— day of —— in the —— year of the reign of —— and continually afterwards until the preſent day, was and yet is very ruinous, deep, broken, and in great decay, for want of due reparation and amendment, ſo that the ſubjects of the king, through the ſame way, with their horſes, coaches, carts, and carriages, could not during the time aforeſaid, nor yet can go, return, or paſs, as they ought and were wont to do; to*

the

the great damage and common nuſance of all the king's ſubjects through the ſame highway going, returning, or paſſing, and againſt the peace of our ſaid lord the king: And that the inhabitants of the —— of —— aforeſaid in the county aforeſaid, the ſaid common highway, ſo in decay, ought to repair and amend, when and ſo often as it ſhall be neceſſary In teſtimony whereof, the ſaid J. P. *to theſe preſents hath ſet his hand and ſeal, this —— day of —— in the year aforeſaid.*

(c) Warrant of diſtreſs for an aſſeſſment.

Middleſex. To the conſtable, &c.

WHEREAS by an aſſeſſment made upon the occupiers of lands, tenements, woods, tithes, and hereditaments, within the —— of —— in the ſaid county, for the purpoſes of, &c. [as ſtated in the juſtices order] *purſuant to an order of juſtices for that purpoſe, according to the directions of the act paſſed in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways," A. O. was charged with the ſum of —— as his ſhare and proportion of the ſaid aſſeſſment, in reſpect of the lands, tenements, woods, tithes and hereditaments, which he occupied within the ſaid ——: And whereas it appears to me upon the oath of —— that the ſaid ſum of —— hath been duly demanded from the ſaid A. O. and that he hath refuſed to pay the ſame for the ſpace of ten days after ſuch demand made; Theſe are therefore, in his majeſty's name, to command you to levy the ſaid ſum of —— by diſtreſs of the goods and chattels of the ſaid A. O. And if the ſaid ſhall not be paid within the ſpace of four days next after ſuch diſtreſs by you taken, together with the reaſonable charges of taking and keeping the ſame, that you do then ſell the ſaid goods and chattels ſo by you diſtrained; and out of the money ariſing by ſuch ſale, that you do pay unto A. S. the ſurveyor of the highways for the ſaid —— of —— the ſaid ſum of —— to be employed for the purpoſes aforeſaid; and that you do return the ſurplus thereof to the ſaid A. O. the reaſonable charges of taking, keeping and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods and chattels of the ſaid A. O. whereon to levy the ſaid ſum of —— that then you certify the ſame to me, together with this warrant. Given under my hand and ſeal the —— day of —— 1774.*

(d) In-

(d) Information againſt an offender.

Middleſex. *BE it remembered, that on the —— day of —— 1774.* A. I. *of —— in the ſaid county informeth and maketh oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of —— in the ſaid county* [Here deſcribe the offence particularly, and follow the words of the act as near as may be] *contrary to the ſtatute made in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways," which hath impoſed a forfeiture of —— for the ſaid offence.*

A. I.

Taken and ſworn the —— day of —— before me J. P.

If it is on the Turnpike act, then ſay, —— *contrary to the ſtatute made in the thirteenth year of the reign of his majeſty king* George *the third "For regulating the turnpike roads,"* &c.

If it is for default in performing ſtatute duty, then in deſcribing the offence, ſtate the duty required, and the notice given for that purpoſe, and the neglect, according to the fact, and as near to the words of the act as may be.

(e) Summons of an offender.

Middleſex. To A. O. of ——

WHEREAS complaint and information hath been made upon oath before me J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, by* A. I. *of —— That* [Here ſtate the nature and circumſtances of the caſe, as far as it ſhall be neceſſary to ſhew the offence, and to bring it within the authority of the juſtice, and in doing that, follow the words of the act as near as may be] *Theſe are therefore to require you perſonally to appear before me* (or, *the juſtices to be aſſembled at their ſpecial ſeſſions to be holden*) *at —— in the ſaid county, on the —— day of —— next, at the hour of —— in the —— noon, to anſwer to the ſaid complaint and information made by the ſaid* A. I. *who is likewiſe directed to be then and there preſent, to make good the ſame.*

ſame. Herein fail not. Given under my hand and ſeal, this —— *day of* —— 1774.

(f) Form of a conviction.

Middleſex. *BE it remembered, that on the* —— *day of* —— *in the year of our Lord* 1774, *at* —— *in the county aforeſaid,* A. O. *came before me* J. P. *eſquire, one of his majeſty's juſtices of the peace of the ſaid county, and informed me, that* A. O. *of* —— *on the* —— *day of* —— *now laſt paſt, at* —— *in the ſaid county, did* [Here ſet forth the fact in the manner deſcribed by the ſtatute] *Whereupon the ſaid* A. O. *after being duly ſummoned to anſwer the ſaid charge, appeared before me on the* —— *day of* —— *at* —— *in the ſaid county, and having heard the charge contained in the ſaid information, declared, that he was not guilty of the ſaid offence: But the ſame being fully proved upon the oath of* A. W. *a credible witneſs, it manifeſtly appears to me the ſaid juſtice, that he the ſaid* A. O. *is guilty of the offence charged upon him in the ſaid information. It is therefore conſidered and adjudged by me the ſaid juſtice, that the ſaid* A. O. *be convicted, and I do hereby convict him of the offence aforeſaid; and I do hereby declare and adjudge that he the ſaid* A. O. *hath forfeited the ſum of* —— *of lawful money of* Great Britain, *for the offence aforeſaid, to be diſtributed as the law directs, according to the form of the ſtatute in that caſe made and provided. Given, &c.*

If the party doth not appear upon the ſummons, then, after the words—*being duly ſummoned to anſwer the ſaid charge*, inſert, *did not appear before me purſuant to the ſaid ſummons*; or *did neglect and refuſe to make any defence againſt the ſaid charge; but the ſame being fully proved, &c.*

If the party confeſſes the charge, then, after the words —*contained in the ſaid information*, inſert, *acknowledged and voluntarily confeſſed the ſame to be true, and it manifeſtly appears to me the ſaid juſtice, &c.*

(g) Order for payment of a forfeiture.

Middleſex. *WHEREAS* A. O. *of* —— *in the ſaid* —— *is duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, for that he the ſaid* A. O. [Here deſcribe the offence as ſet forth in the information] *whereby he the ſaid* A. O. *hath forfeited the ſum of* —— *I do therefore hereby order the*

the ſaid A. O. *to pay to* A. S. *ſurveyor of the* —— *the ſaid ſum of* —— *to be by him diſpoſed of as the law directs. Given under my hand and ſeal the* —— *day of* —— 1774.

(h) Warrant of diſtreſs for a forfeiture. (Not to be iſſued till after ſix days from ſervice of the order for payment.)

Middleſex. To the conſtable of——.

WHEREAS A. O. *of* —— *in the ſaid county, yeoman, is duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *hath* [Here ſet forth the offence, deſcribing it particularly in the words of the ſtatute as near as may be] *contrary to the ſtatute in that caſe made and provided, by reaſon whereof the ſaid* A. O. *hath forfeited the ſum of* —— *to be diſtributed as herein is mentioned, which he hath refuſed to pay: Theſe are therefore in his majeſty's name to command you to levy the ſaid ſum of* —— *by diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of four days next after ſuch diſtreſs by you taken, the ſaid ſum, together with the reaſonable charges of taking and keeping the ſame, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of* —— *to* A. I. *of* —— *who informed me of the ſaid offence, and the other half of the ſaid ſum of* —— *to* A. S. *the ſurveyor of the highways for the* —— *of* —— *where the ſaid offence* (*neglect*, or *default*,) *happened, to be employed towards the repair of the ſaid highways* [or as the caſe ſhall be], *returning the overplus upon demand to him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods and chattels of the ſaid* A. O. *whereon to levy the ſaid ſum of* —— *that then you certify the ſame to me, together with this warrant. Given under my hand and ſeal, the* —— *day of* —— 1774.

If it is for a turnpike forfeiture, then ſay, —— *to* A. S. *ſurveyor of the turnpike road* (deſcribing it) —— *to be employed towards the repair of the ſaid road* ——.

(i) Con-

(i) Conſtable's return of want of diſtreſs.

I A. C. *conſtable of the —— of —— in the county of —— do hereby certify and make oath, that by virtue of this warrant, I have made diligent ſearch for the goods of the within named —— and that I can find no ſufficient goods whereon to levy the within ſum of —— As witneſs my hand the —— day of —— 1774.*

Sworn before me the day and year, &c. J. P. A. C.

(k) Commitment for want of diſtreſs.

Middleſex. { To the conſtable of —— in the ſaid county, and to the keeper of the common gaol [or, houſe of correction] at —— in the ſaid county.

WHEREAS A. O. *of —— in the ſaid county, yeoman, was on the —— day of —— convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. [Here ſet forth the offence] *contrary to the ſtatute made in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways,"* [If it is a turnpike offence, then ſay, *"For regulating the turnpike roads,"*] *by reaſon whereof the ſaid* A. O. *hath forfeited the ſum of —— : And whereas on the —— day of —— in the year aforeſaid, I did iſſue my warrant to the conſtable of —— to levy the ſaid ſum of —— by diſtreſs and ſale of the goods and chattels of him the ſaid* A. O. *and to diſtribute the ſame according to the directions of the ſaid ſtatute : And whereas it duly appears to me upon the oath of the ſaid* (conſtable) *that he the ſaid —— hath uſed his beſt endeavours to levy the ſaid ſum on the goods and chattels of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be had whereon to levy the ſame : Theſe are therefore to command you the ſaid conſtable of —— aforeſaid, to apprehend the ſaid* A. O. *and him ſafely to convey to the common gaol* [or, *houſe of correction*] *at —— in the ſaid county, and there deliver him to the keeper thereof, together with this precept. And I do hereby alſo command you the ſaid keeper, to receive and keep in your cuſtody the ſaid* A. O. *for the ſpace of three months, unleſs the ſaid ſum ſhall be ſooner paid purſuant*

ſuant to the ſaid conviction and warrant; and for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the —— day of —— in the year of our Lord ——.

In caſe of a commitment for want of payment of money due on an aſſeſſment, it muſt be—— *to receive and keep in your cuſtody, until he ſhall have paid the ſaid ſum of —— and the further ſum of —— being the coſts and charges occaſioned by his neglect in paying the ſame.*

(l) Notice of appeal.

A. B. Take notice, that I intend to appeal to the next general quarter ſeſſions of the peace, to be holden for the county of —— againſt an order [*conviction*, or other proceeding, as the caſe may be, particularly ſpecifying the purport of ſuch order, &c. and aſſigning the grievance and cauſe of complaint.] *Dated the —— day of ——* 1774.

C. D.

(m) Order of turnpike truſtees for erecting a weighing engine.

At a meeting of the truſtees under an act paſſed in the —— year of the reign of —— for [Here recite the principal part of the title of the particular act] *held at —— the —— day of ——* 1774.

In purſuance of the powers given to us by an act paſſed in the thirteenth year of the reign of his majeſty king George *the third "For regulating the turnpike roads," we do hereby order, that an engine proper for the weighing of carriages, of the conſtructions and weights ſpecified in the ſaid act be forthwith erected at or as near as conveniently may be to the toll gate or bar now erected upon the ſaid turnpike road at —— and that* A. B. *the treaſurer* (*clerk*, or *ſurveyor*) *of the ſaid turnpike road do contract with ſome proper perſon* (or, *with* C. D. in caſe the truſtees ſhall think fit to name the perſon) *for the making and erecting ſuch engine, and do inſpect and take care that the ſame is properly done. And we do order the gate keeper at the ſaid gate or bar for the time being to attend the ſaid weighing engine, and carefully to weigh all carriages paſſing, loaded upon the ſaid road, at the place where ſuch engine ſhall be erected, together with the loading thereof, and to take the ſeveral additional tolls or rates for overweight, and give tickets of the weight of ſuch carriages and loading, when required, by the driver thereof, according to the directions of*

the said act; and also to enter in a separate book, to be kept by him for that purpose, an account of every carriage so weighed, which shall, with the loading, exceed the weights allowed by the said act, and account to us for the money received for all such overweight. Given under our hands ——.

(n) Allowance of an increased number of horses drawing up a steep hill.

AT a meeting of the trustees of a turnpike road, under an act passed in the ——— *year of the reign of* ——— *for* [Here state the principal part of the title of the act] *held at* ——— *the* —— *day of* ——— 1774.

It appearing to us, upon the oath of —— *being a person experienced in levelling, that the rise of part of a certain hill, upon the said turnpike road, lying in the parish of* —— *called or known by the name of* —— *between the post marked* "Put on," *and the post marked* "Take off," *being* —— *yards in length, is above 4 inches in a yard; we do hereby allow to be drawn up the said hill, between the post abovementioned, waggons having the soles or bottom of the fellies of the wheels of the breadth of 9 inches with* —— *horses, and carts having the like wheels with* —— *horses; and waggons having wheels of the breadth of 6 inches with* —— *horses, and carts having the like wheels with* —— *horses; and waggons having wheels of less breadth than 6 inches with* —— *horses, and carts having the like wheels with* —— *horses.*

If the whole rise be upon an average more than 4 inches in a yard, then say, —— *that the rise of a certain hill* —— *is upon an average above four inches* ———

(o) Certificate thereof to the sessions.

I A. C. *clerk to the trustees mentioned in the above order, do hereby certify to the justices of the peace for the* —— *of* —— *at their general quarter sessions of the peace, that the above is a true copy of the order made by the said trustees, for the purposes therein mentioned. Dated this* —— *day of* ——— 1774.

(p) Notice of contracting for materials.

NOTICE is hereby given, that A. S. *surveyor of the turnpike road lying between* —— *and* —— *will on the* —— *day of* ——— *next, at the hour of* ——— *in the* ——

noon,

noon, let the getting of ——— *cart loads of gravel* [or, —— *of ſtone*], *to be got at a pit at* —— *for the uſe of the ſaid turnpike road, and will alſo let the carriage of the ſaid gravel* [or *ſtone*] *from the ſaid pit to* ——— *where the ſame is to be uſed and employed upon the ſaid turnpike road. And all perſons deſirous of entering into a contract with the ſaid ſurveyor, either for getting or carrying the ſaid materials, are deſired to attend at the time and place before mentioned. Dated this* ——— *day of* ——— 1774.

(q) Agreement with perſons obliged to particular repairs.

AT a meeting of the truſtees of the turnpike roads under an act paſſed in the ——— *year of the reign of* ——— *for* [Here ſtate the principal part of the title of the act] *held at* —— *the* ——— day of ——— 1774.

Whereas A. B. *of* ——— *is liable by tenure* (or as the caſe ſhall be) *to the repair of a certain highway leading between* ——— *and* ——— *of the length of* ——— *yards or thereabouts, and the ſaid highway being now made turnpike road by virtue of the ſaid act, will occaſion a greater expence to make and keep the ſame in proper repair, than would have been neceſſary if no ſuch act had been obtained; and the ſaid* A. B. *attending this meeting in perſon* (or, *by* C. D. *his attorney or agent authorized to treat in that behalf*), *the ſaid truſtees and the ſaid* A. B. *&c. in purſuance of a power given by an act paſſed in the* 13*th year of the reign of king* George *the third* "*For regulating turnpike roads*," *have, in order to put and keep the ſaid road in proper condition and repair, come to the following agreement,* viz. *That the ſaid truſtees ſhall, on or before the* —— *day of* ——— *next, pay and allow the ſum of* ——— *out of the tolls ariſing upon the ſaid turnpike roads, towards putting the ſaid road into proper repair, to be laid out and expended by the ſurveyor of the ſaid turnpike road; and that the ſaid* A. B. *ſhall advance and pay into the hands of the treaſurer of the ſaid turnpike road, on or before the* ——— *day of* —— *next, the ſum of* ——— *to be alſo laid out and expended by the ſaid ſurveyor in the repair of the ſaid road: And that from and after the* ——— *day of* —— *next, the ſaid turnpike road ſhall be kept in repair by the ſaid truſtees out of the ſaid tolls as aforeſaid, ſo long as the ſaid turnpike act ſhall continue, upon the ſaid* A. B. *paying into the hands of their treaſurer the ſum of* ——— *upon the* —— *day of* —— *every year; which the ſaid* A. B. *doth hereby for himſelf and his heirs agree to*

pay accordingly, ſo long as the ſaid road ſhall be ſo repaired by the ſaid truſtees as aforeſaid.

Or the ſame precedent may be varied according to circumſtances.

(r) Order for the repair of a new highway.

Middleſex. *WE, two of his majeſty's juſtices of the peace for the ſaid county, acting within the* (hundred) *of* ——— *in the ſaid county, having* (*at the requeſt of the parties intereſted in the repair of part of the highway,* [or, *turnpike road hereafter mentioned, who could not agree about the repair thereof*) *viewed a certain part of the highway* (or, *turnpike road*) *deſcribed in the plan hereunto annexed of the length of* ——— *yards, which hath been ſet out and appropriated for a new highway* (or, *turnpike road*) *between* —— *and* —— *in lieu of an old highway* (or, *turnpike road*) *which hath been ordered to be ſtopped up; and having alſo viewed the ground where the ſaid old highway was ſituated, and having ſummoned the ſurveyor of the ſaid new highway* (or, *turnpike road*), *and alſo* A. B. *who was liable by tenure,* &c. [If the old road laid in a different pariſh, and was to be repaired by the inhabitants, then ſay, *and alſo the ſurveyor of the pariſh of* ——— *where the ſaid old road lay, who were liable to the repair of the ſaid old highway* (or, *turnpike road*) *to appear before us this day; and having heard what has been alleged touching the repair of the ſaid part of the ſaid highway* (or, *turnpike road*), *and having fully conſidered the ſame, and all the circumſtances of the caſe; We think it juſt and reaſonable, and do hereby order and adjudge, that the ſaid* A. B. (or, *the inhabitants of the ſaid pariſh,* &c.) *ſhall from time to time repair, and keep in repair, the whole* (or, *a part*) *of the ſaid highway, from* ——— *to* ——— *containing* —— *yards in length, at each end whereof we have cauſed a poſt, or ſtone, to be placed, to aſcertain the extent thereof. Given under our hands and ſeals this* —— *day of* —— 1774.

If it be agreed by the conſent of parties, to pay a ſum in groſs in lieu of ſuch repairs, then, after the word *adjudge,* inſert, *by and with the conſent of the ſaid* A. B. *ſignified by his ſubſcribing his name to this order* (or, *by the conſent of the inhabitants of the ſaid pariſh of* —— *ſignified in writing at a veſtry or other publick meeting, a copy whereof is here under written*) *that the ſaid* A. B. (or, *the inhabitdnts* ———) *is* (or, *are*) *liable to repair part of the ſaid new highway; and that if he* (or, *they*) *ſhall, on or before the* —— *day of* ——

next, pay to the ſurveyors of the highways of the ſaid pariſh of ——— [if it is not turnpike road; but if it be turnpike road, then ſay, *to the treaſurer of the ſaid turnpike road*] *the ſum of* ——— *he the ſaid* A. B. *and his heirs,* (or, *the ſaid inhabitants and their ſucceſſors*) *ſhall be for ever acquitted and diſcharged from the burden and obligation to repair the ſaid new highway or any part thereof.*

(s) Agreement of the inhabitants to pay a groſs ſum to be diſcharged from the repair of a particular road.

WE whoſe names are ſubſcribed, being a majority of the inhabitants of the —— of ——— aſſembled this —— day of ——— at a veſtry or publick meeting held purſuant to notice duly given, for the purpoſes of conſulting about an agreement to be made concerning the repair of part of a highway, (or, *turnpike road*) *within the ſaid ——— of ——— do conſent and agree to pay the ſum of ——— to be abſolutely exonerated and diſcharged from all future repairs of the ſaid highway* (or, *turnpike road*). —— If an annual payment be agreed upon, then ſay, *to pay annually the ſum of* ———

(t) Order for transferring ſtatute turnpike duty to other roads.

Middleſex. *AT a ſpecial ſeſſions held by juſtices of the peace for the ſaid county, acting in the hundred of ——— within the ſaid county, at ——— on the ——— day of ———* 1774.

Whereas application and complaint upon oath hath been made unto us, by A. B. *ſurveyor of the* (pariſh, &c.) *of —— that the ſeveral highways, not being turnpike, within the ſaid —— are very extenſive, and in bad repair, and that a conſiderable part of the ſtatute duty ariſing within the ſaid —— hath been called forth, and required to be applied in the repair of certain turnpike roads lying within the ſaid —— which are in good condition, and have a conſiderable revenue for their ſupport, ariſing from the tolls collected thereupon: And we having duly ſummoned* C. D. *the ſurveyor of the ſaid turnpike road, to appear before us, to ſhew cauſe why the ſaid ſtatute duty, called forth and applied by him to the repair of the ſaid turnpike road, ſhould not be withdrawn therefrom, and applied to the repair of the other highways within the ſaid —— ; and upon hearing the ſaid* C. D. *and receiving an account of the revenues and debts of the ſaid turnpike road, and of the ſtate and condition of the*

repair of the said turnpike road and highway respectively; and it appearing to us, upon full consideration had thereupon, that part of the statute duty hitherto employed by the said —— for the repair of the said turnpike road, may be conveniently dispensed with, without endangering the securities for the money advanced upon the credit of the tolls thereof; and that such statute duty is wanted for the repairs of the other highways within the said ——; we, in pursuance of the power given to us by the act passed in the thirteenth year of the reign of king George *the third "For regulating turnpike roads," do order, that, from and after the —— day of —— next, there shall be only — days statute duty performed by the inhabitants of the said —— upon the said turnpike road within the same, and that the remainder of the statute duty shall be performed upon the other highways within the said ——*

(u) Notice for letting tolls.

NOTICE is hereby given, that the tolls arising at the toll gate upon the turnpike road at —— called or known by the name of the —— gate, will be let by auction to the best bidder, at the house of —— at —— on the —— day of —— next, between the hours of —— and —— in the manner directed by the act passed in the thirteenth year of the reign of his majesty king George *the third "For regulating the turnpike roads;" which tolls produced the last year the sum of —— above the expences of collecting them, and will be put up at that sum. Whoever happens to be the best bidder must at the same time give security, with sufficient sureties, to the satisfaction of the trustees of the said turnpike road, for the payment of the rent agreed for, and at such times as they shall direct.*

A. C. *clerk to the trustees of the said turnpike road.*

Highwaymen. See Robbery.

Homicide.

HOMICIDE in law signifies the killing of a man by a man. 1 *Haw.* 66.

And it includes in it, not only petit treason, concerning which title see Treason; but also the several offences which are treated of in the following sections.

There

There is alſo another kind of untimely death of a man, not properly homicide: When he is killed by a horſe, a cart, a tree, or the like, and not by a man, which is called caſual death; for which ſee title Deodand.

I. Juſtifiable homicide.
II. Homicide by miſadventure.
III. Homicide by ſelf-defence.
IV. Manſlaughter.
V. Murder.
VI. Self-murder.

I. Juſtifiable homicide.

On a real neceſſity.

To make homicide juſtifiable, it muſt be owing to ſome avoidable neceſſity, to which the perſon who kills another muſt be reduced, without any manner of fault in himſelf. 1 *Haw.* 69.

And there muſt be no malice coloured under pretence of neceſſity; for wherever a perſon who kills another acts in truth upon malice, and takes occaſion from the appearance of neceſſity to execute his own private revenge, he is guilty of murder. *Id.*

Killing robbers and burglars.

If any evil diſpoſed perſon ſhall attempt felonioufly to rob or murder any perſon in any dwelling-houſe or highway, or felonioufly attempt to break any dwelling-houſe in the night time, and ſhall happen in ſuch felonious intent to be ſlain, the ſlayer ſhall be diſcharged, and ſhall forfeit no lands nor goods. 24 *H.* 8. *c.* 5.

Treſpaſſers in parks.

If treſpaſſers in a foreſt, chaſe, park, or warren, or any incloſed ground wherein deer are kept, will not render themſelves to the keepers, upon a hue and cry made to ſtand to the king's peace, but fly from, or defend themſelves againſt them, they may be ſlain by them. 1 *Haw.* 71.

Rioters.

If rioters, or forcible enterers or detainers, ſtand in oppoſition to the juſtices' lawful warrant, and any of them is ſlain; it is no felony. *Hale's Pl.* 37.

Houſe burners.

If a man comes to burn my houſe, and I ſhoot out of my houſe, or iſſue out of my houſe, and kill him; it is no felony. *Id.* 39.

Raviſhers.

If a woman kill him that aſſaulteth to raviſh her; it is no felony. *Id.*

Felons refuſing to be arreſted.

If a perſon having actually committed a felony, will not ſuffer himſelf to be arreſted, but ſtands on his own defence, or flies, ſo that he cannot poſſibly be apprehended

alive by thoſe who purſue him, whether private perſons, or publick officers, with or without a warrant from a magiſtrate, he may be lawfully ſlain by them. 1 *Haw.* 70.

Suſpected felon refuſing to be arreſted.

So if a felony hath actually been committed, and an officer or miniſter of juſtice, having lawful warrant ſo to do, arreſt an innocent perſon, and ſuch perſon aſſault the officer or miniſter of juſtice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwiſe avoid it, but in ſtriving kill him, it is no felony. And in that caſe, the officer or miniſter of juſtice ſhall forfeit nothing; but the party who ſo aſſaulted or offered to fly away, and is killed, ſhall forfeit his goods. 3 *Inſt.* 56.

Felon eſcaping.

Alſo if a perſon arreſted for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwiſe take him. But in this caſe likewiſe, there muſt have been a felony actually committed. *Hale's Pl.* 36, 37.

Felon breaking gaol.

Alſo if a criminal endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the fray. 1 *Haw.* 71.

Reſiſting a civil proceſs.

In civil cauſes: Although the ſheriff cannot kill a man who flies from the execution of a civil proceſs; yet if he reſiſt the arreſt, the ſheriff or his officer need not give back, but may kill the aſſailant. *Hale's Pl.* 37.

So if in the arreſt and ſtriving together, the officer kill him, it is no felony. *Id.*

Trial and diſcharge.

In all theſe caſes the party upon arraignment having pleaded not guilty, the ſpecial matter muſt be found; whereupon the party ſhall be diſmiſſed, without any forfeiture, or pardon purchaſed. *Id.* 38.

II. Homicide by miſadventure.

Chancemedley.

I have purpoſely avoided the word *chancemedley* in this place, becauſe authors do not ſeem to be agreed whether it is to be applied to homicide *by miſadventure*, or to *manſlaughter*. L. *Coke* and Mr. *Hawkins* ſeem to underſtand it of *manſlaughter*; L. *Hale*, and others, of homicide *by miſadventure*. The original meaning of the word ſeems to favour the former opinion, as it ſignifies a ſudden or caſual meddling or contention; whereas homicide *by miſadventure* ſuppoſeth no previous meddling or falling out. But the ſame author ſometimes in different places, applies it to both of them promiſcuouſly.

Homicide by misadventure is, where a man is doing a lawful act, without intent to hurt another, and death casually ensues. *Hale's Pl.* 31. What is homicide by misadventure.

As where a labourer being at work with a hatchet, the head flies off, and kills one who stands by. 1 *Haw.* 73. Cases of homicide by misadventure.

Or where a third person whips a horse, on which a man is riding, whereupon he springs out and runs over a child, and kills him; in which case the rider is guilty of homicide by misadventure, and he who gave the blow, of manslaughter. 1 *Haw.* 73.

But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide and not by misadventure; and if he ride so, in a press of people, with intent to do hurt, and the horse killeth another, it is murder in the rider. 1 *H. H.* 476.

If a person drives his cart carelessly, and it runs over a child in the street, if he have seen the child, and yet drives on upon him, it is murder; but if he saw not the child, yet it is manslaughter; but if the child had run cross the way, and the cart run over the child before it was possible for the carter to make a stop, it is by misadventure. *Id.*

So where workmen throw stones, rubbish, or other things from an house, in the ordinary course of their business, by which a person underneath happens to be killed; if they look out and give timely warning to those below, it will be homicide by misadventure; if without such caution, it will amount to manslaughter at least; it was a lawful act, but done in an improper manner. It is said by some, that if this be done in the streets of *London*, or other populous towns, it will be manslaughter notwithstanding the caution above-mentioned. But this will admit of some limitation. If it be done early in the morning, when few or no people are stirring, and the ordinary caution is used, it seemeth that the party is excusable. But when the streets are full, that will not suffice; for in the hurry and noise of a crouded street, few people hear the warning, or sufficiently attend to it. *Fost.* 262, 263.

It is said before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. And if a person meaning to steal a deer, in another man's park, shooteth at the deer, and by the glance of the arrow killeth a boy, that is hidden in a bush; this is murder, for that the act was unlawful, altho'

altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had ſhot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by miſadventure, and no felony. 3 *Inſt.* 56.

So if any ſhoot at any wild fowl upon a tree, and the arrow killeth any reaſonable creature afar off, without any evil intent in him, this is by miſadventure: for it was not unlawful to ſhoot at the wild fowl. But if he had ſhot at a cock or a hen, or any tame fowl of another man's, and the arrow by miſchance had killed a man; if his intention was to ſteal the poultry (which muſt be collected from circumſtances), it will be murder by reaſon of that felonious intent; but if it was done wantonly, and without that intention, it will be barely manſlaughter. *Foſt.* 258, 9.

The rule before laid down ſuppoſeth, that the act from which death enſued, was *malum in ſe*. For if it was barely *malum prohibitum*, as ſhooting at game by a perſon not qualified by ſtatute law to keep or uſe a gun for that purpoſe; the caſe of a perſon ſo offending, will fall under the ſame rule as that of a qualified man. For the ſtatutes prohibiting the deſtruction of the game, under certain penalties, will not in a queſtion of this kind enhance the accident beyond its intrinſic moment. *Foſt.* 259.

Further, if there be an evil intent, tho' that intent extendeth not to death, it is murder. Thus, if a man, knowing that many people are in the ſtreet, throw a ſtone over a wall, intending only to frighten them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, tho' that intent extended not to death, and though he knew not the party ſlain. 3 *Inſt.* 57.

And it is a general rule in caſe of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw.* 74.

But in all the caſes above, if it doth only hurt a man, by ſuch an accident, it is nevertheleſs a treſpaſs; and the perſon hurt ſhall recover his damages: for tho' the chance excuſe from felony, yet it excuſeth not from treſpaſs. 1 *H H.* 472.

Eſcape. If a perſon eſcape that hath killed another by miſadventure, the town ſhall be amerced. 2 *Inſt.* 149.

This kind of homicide no felony. This homicide is not felony, becauſe it is not accompanied with a felonious intent, which is neceſſary in every felony. 1 *Haw.* 75.

But

But yet a perſon guilty thereof is not bailable by juſtices of the peace, but muſt be committed to the aſſizes. 1 *Haw.* 75. Bail.

But if he is taken only on a ſlight ſuſpicion, the juſtices of the peace may bail him. 2 *Haw.* 105.

Altho' this homicide is not properly a man's crime, but his misfortune; yet becauſe the king hath loſt his ſubject, and in reſpect of the great favour the law hath to the life of man, and to the end that men ſhould uſe all care, diligence, and circumſpection in all they do, that no hurt ſhould come of their actions, a perſon convicted hereof ſhall forfeit his goods, and ſhall not preſently be diſcharged of his impriſonment, but bailed, that he may ſue out his pardon, which he ſhall have out of the chancery of courſe. 1 *H. H.* 477. 492. 1 *Haw.* 76. Forfeiture.

III. Homicide by ſelf-defence.

Homicide in a man's own defence ſeems to be, where one who hath no other poſſible means of preſerving his life from one who combats with him on a ſudden quarrel, kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. 1 *Haw.* 75. Se defendendo what.

And not only he, who upon an aſſault retreats to a wall, or ſome ſuch ſtrait, beyond which he can go no farther before he kills the other, is judged by the law to act upon unavoidable neceſſity; but alſo he, who being aſſaulted in ſuch a manner, and in ſuch a place, that he cannot go back without manifeſtly endangering his life, kills the other without retreating at all. *Id.* Caſes of ſe defendendo.

And notwithſtanding a perſon who retreats from an aſſault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *ſe defendendo* only. *Id.*

But if the mortal wound was firſt given, then it is manſlaughter. *Hale's Pl.* 42.

And an officer who kills one that reſiſts him in the execution of his office, and even a private perſon that kills one who felonioufly aſſaults him in the highway, may juſtify the fact, without ever giving back at all. 1 *Haw.* 75.

But if a perſon upon malice *prepenſe* ſtrike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42.

Hereof

Acceſſaries. Hereof there can be no acceſſaries, either before or after the act, becauſe it is not done with a felonious intent, but upon inevitable neceſſity. 3 *Inſt.* 56.

Eſcape. If a man eſcape, that hath killed another in his own defence, the town ſhall be amerced. 2 *Inſt.* 315.

Bail. A perſon guilty hereof is not bailable by juſtices of the peace; but they muſt commit him till the aſſizes. 1 *Haw.* 76.

But otherwiſe it is, if he is taken only on a ſlight ſuſpicion. 2 *Haw.* 105.

Power of juſtices of the peace. L. *Coke* (2 *Inſt.* 316.) ſays, that the juſtices of the peace cannot take an indictment of killing a man *ſe defendendo*; becauſe their commiſſion is not general, as is that of the juſtices of gaol delivery, but limited. But L. *Hale* (2 *H. H.* 46.) holds the contrary.

Forfeiture. A perſon convicted hereof, ſhall not be diſcharged out of priſon but upon bail, and ſhall forfeit all his goods, altho' the cauſe was inevitable. And this becauſe of the great regard which the law hath for the life of man; and alſo by reaſon that the law intends it had a beginning upon an unlawful cauſe: for quarrels are not preſumed to grow without ſome wrongs in words or deeds, and ſo malice on both ſides. But he ſhall have his pardon out of the chancery of courſe. 3 *Inſt.* 56. 1 *Haw.* 76.

Flight. If a man be indicted for homicide *ſe defendendo*, and is found not guilty, yet if it be found that he fled for the ſame, he ſhall forfeit his goods for ſuch flight, in not ſtanding to the law of the land. 1 *H. H.* 493.

IV. Manſlaughter.

Manſlaughter, what. By manſlaughter is to be underſtood ſuch killing of a man as happens either on a ſudden quarrel, or in the commiſſion of an unlawful act, without any deliberate intention of doing any miſchief at all. 1 *Haw.* 76.

Without malice. There is no difference between murder and manſlaughter, but that murder is upon malice forethought, and manſlaughter upon a ſudden occaſion. As if two meet together, and ſtriving for the wall, the one kill the other, this is manſlaughter and felony. And ſo it is, if they had upon that ſudden occaſion gone into the field and fought, and the one had killed the other, this had been but manſlaughter, and no murder; becauſe all that followed was but a continuance of the firſt ſudden occaſion, and the blood was never cooled, till the blow was given. 3 *Inſt.* 55.

There

There can be no acceſſaries to this offence before the fact, becauſe it muſt be done without premeditation. 1 *Haw.* 76. Acceſſaries.

But there may be acceſſaries after the fact. 3 *Inſt.* 55.

This offence is not bailable by juſtices of the peace. 3 *Ed.* 1. *c.* 15. Bail.

It is within the benefit of clergy; but the offender ſhall forfeit as in other felonies. 2 *H. H.* 344. Clergy.

But there is one kind of manſlaughter, which by the ſtatute of the 1 *J. c.* 8. is excluded the benefit of clergy; *viz.* He who ſhall ſtab or thruſt any perſon that hath not then any weapon drawn, or hath not then ſtricken firſt, ſo as the perſon ſo ſtabbed or thruſt ſhall die thereof in ſix months, altho' it cannot be proved that the ſame was done of malice forethought, ſhall be guilty of felony without benefit of clergy. Stabbing.

V. Murder.

Murder is, when a man ſound of memory, and of the age of diſcretion, unlawfully killeth any perſon under the king's peace, with malice forethought, either expreſſed by the party, or implied by law; ſo that the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 *Inſt.* 47. Murder, what.

By *malice expreſſed*, is meant, a deliberate intention of doing any bodily harm to another, whereunto by law a perſon is not authoriſed. 1 *H. H.* 451. Malice expreſſed.

And the evidences of ſuch a malice muſt ariſe from external circumſtances diſcovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compaſſings, and the like, which are various, according to variety of circumſtances. *Id.*

Malice implied is in ſeveral caſes: as when one voluntarily kills another without any provocation; for in this caſe the law preſumes it to be malicious, and that he is a publick enemy of mankind. 1 *H. H.* 455, 456. Poiſoning alſo implies malice, becauſe it is an act of deliberation. 1 *H. H.* 455. Malice implied.

Alſo when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 *H. H.* 457.

Alſo where a priſoner dieth by dureſs of the gaoler, the law implies malice, by reaſon of the cruelty. 3 *Inſt.* 52.

Malice prepenſe.

And in general, any formed deſign of doing miſchief may be called malice, and therefore not ſuch killing only as proceeds from premeditated hatred or revenge againſt the perſon killed, but alſo in many other caſes, ſuch as is accompanied with thoſe circumſtances that ſhew the heart to be perverſely wicked, is adjudged to be of malice *prepenſe*, and conſequently murder. 2 *Haw.* 80. *Strange* 766.

Malice aforethought.

For when the law makes uſe of the term *malice aforethought*, as deſcriptive of the crime of murder, it is not to be underſtood in that narrow reſtrained ſenſe to which the modern uſe of the word *malice* is apt to lead one, *a principle of malevolence to particulars*; for the law by the term *malice* (*malitia*) in this inſtance meaneth, that the fact hath been attended with ſuch circumſtances as are the ordinary ſymptoms of a wicked heart, regardleſs of ſocial duty, and fatally bent upon miſchief. *Foſt.* 256, 7.

And wherever it appears that a man killed another, it ſhall be intended *prima facie* that he did it maliciouſly, unleſs he can make out the contrary, by ſhewing that he did it on a ſudden provocation, or the like. 1 *Haw.* 82.

Beating a perſon in cool blood.

Alſo wherever a perſon in cool blood, by way of revenge, beats another in ſuch a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone ſo far. 1 *Haw.* 83.

No affront will juſtify murder.

And it ſeems to be agreed, that no breach of a man's word or promiſe, no treſpaſs either to lands or goods, no affront by bare words or geſtures, however falſe or malicious it may be, and aggravated with the moſt provoking circumſtances, will excuſe him from being guilty of murder, who is ſo far tranſported thereby, as immediately to attack the perſon who offends him, in ſuch a manner as manifeſtly endangers his life, without giving him time to put himſelf upon his guard, if he kills him in purſuance of ſuch an aſſault, whether the perſon ſlain did at all fight in his defence or not. 1 *Haw.* 82.

Perſon killed by paſſion, grief, or fear.

If a man by harſh and unkind uſage put another into ſuch a paſſion of grief or fear, that the party either die ſuddenly, or contract ſome diſeaſe whereof he dies, though this may be murder or manſlaughter in the ſight of God, yet, in a human judicature, it cannot come under the judgment of felony, becauſe no external act of violence was offered, whereof the law can take notice. 1 *H. H.* 429.

Duelling after a ſudden quarrel.

If two fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice prepenſed: for the fetching of the weapon, and going into the field, is but a con-

continuance of the ſudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay though it were the ſame day, if there were ſuch a competent diſtance of time, that in common preſumption, they had time of deliberation, then it is murder. 3 *Inſt.* 51. 1 *H. H.* 453.

And the law ſo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but alſo his ſeconds, are guilty of murder, whether they fought or not. And it is holden, that the ſeconds of the party ſlain are likewiſe guilty as acceſſaries. 1 *Haw.* 82. Duelling in cold blood.

If a phyſician or ſurgeon gives a perſon a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a diſeaſe, and contrary to the phyſician or ſurgeon's expectation it kills him, this is no homicide. And L. *Hale* ſays, he holds their opinion to be erroneous, who think that if he be no licenſed ſurgeon or phyſician, that occaſioneth this miſchance, that then it is felony. Theſe opinions (he ſays) may caution ignorant people not to be too buſy in this kind of tampering with phyſick, but are no ſafe rule for a judge or jury to go by. 1 *H. H.* 429. Phyſician giving a potion which cauſes death.

But if a woman be with child, and any gives her a potion to deſtroy the child within her, and ſhe take it, and it works ſo ſtrongly that it kills her, this is murder; for it was not given her to cure her of a diſeaſe, but unlawfully to deſtroy the child within her; and therefore he that gives her a potion to this end, muſt take the hazard, and if it kills the mother it is murder. 1 *H. H.* 430. Giving a potion to cauſe abortion.

Alſo if a woman be quick with child, and by a potion or otherwiſe killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and ſhe is delivered of a dead child, this is a great miſpriſion, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cauſe, this is murder. 3 *Inſt.* 50.

L. *Hale* ſays, that in this caſe it cannot legally be known, whether the child were killed or not; and that if the child die after it is born and baptized, of the ſtroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. *Dalton* ſays, whether it die within her body, or ſhortly after her delivery, it maketh no difference. *Dalt.* 332. But Mr. *Hawkins* ſays, that (in this latter caſe) it ſeems clearly to be murder, notwithſtanding ſome opinions to the contrary. 1 *Haw.* 80.

Alſo it ſeems agreed, that where one counſels a woman to kill her child when it ſhall be born, who afterwards doth kill Counſelling a woman to kill her child.

kill it in pursuance of such advice, he is an accessary to the murder. 1 *Haw.* 80.

Concealing the birth of a child.

By the 21 *Jac. c.* 27. If a woman be delivered of a bastard child, and she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; she shall suffer death as in case of murder, except she can prove by one witness that it was born dead.

Keeping unruly cattle.

L. *Hale* says, if a man have a beast, as a bull, cow, horse, or dog, used to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it:

If he have no particular notice that it did any such thing before, yet if it is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape, or a monkey, if it get loose and do harm to any person, the owner is liable to an action for the damage:

If he have notice of the quality of any such his beast, and use all due diligence to keep him up, and yet he breaks loose and kills a man, this is no felony in the owner, but the beast is a deodand.

But if he did not use that due diligence, but through negligence the beast goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manslaughter in the owner.

But if he did purposely let him loose or wander abroad, with design to do mischief, nay though it were with design only to fright people and make sport, and it kills a man, it is murder in the owner. 1 *H. H.* 431.

Persons present when murder is committed.

They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. 3 *Inst.* 53.

Escape.

If a murder be committed in the day time, in a town not inclosed, and the murderer escape, the township shall be amerced: but if inclosed, whether the murder be in the night or day, the town shall be amerced. *Id.*

Where the stroke is in one county and the death in another.

Where any person shall be feloniously striken or poisoned in one county, and die in another county; the offender may be indicted in the county where the party dies, before the coroner, justices of the peace, or other justices. 2 & 3 *Ed.* 6. *c.* 24. *s.* 2.

Where the principal commiteth the offence in one county, and the accessary in another.

Where a murder is committed in one county, and a person is accessary in another county, he may be indicted in the county where he was accessary, on certificate of the con-

conviction of the principal in the county where he committed the murder. *ſ.* 4.

If any perſon be feloniouſly ſtriken or poiſoned upon the ſea, or out of *England*, and ſhall die of the ſame in *England*; or ſhall be feloniouſly ſtriken or poiſoned in *England*, and ſhall die of the ſame on the ſea, or out of *England*; the offenders and acceſſaries may be indicted in the county where any ſuch death, ſtroke, or poiſoning ſhall happen, before the coroner, juſtices of the peace, or other juſtices; and the judges of aſſize, or any ſuperior court, to which the indictment ſhall be removed, ſhall proceed thereon accordingly. 2 *G.* 2. *c.* 21. Where the ſtroke is in England, and the death out of England; and vice verſa.

If a man be ſlain or murdered, and the ſlayers, murderers, and acceſſaries be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they ſhall not be ſuffered to go at large, but be committed or bailed, till the year and day be paſt: and an appeal may be brought, notwithſtanding ſuch acquittal on indictment, if he hath not had his clergy. 3 *H.* 7. *c.* 1. Trial, when.

Sentence in caſe of murder ſhall be pronounced in open court immediately after conviction, unleſs the court ſhall ſee reaſonable cauſe for poſtponing the ſame; in which ſhall be expreſſed not only the uſual judgment of death, but alſo the time appointed for execution, and the marks of infamy directed for ſuch offenders. 25 *G.* 2. *c.* 37. *ſ.* 3. Judgment.

And after conviction and judgment, the gaoler ſhall confine the priſoner to ſome cell, or other proper and ſafe place in the priſon, apart from the other priſoners; and no perſon, except the gaoler, or his ſervants, ſhall have acceſs to him, without a licence from the judge, ſheriff, or under ſheriff. But if the judge ſhall ſee cauſe to reſpite the execution, he may, during the time of ſuch ſtay, relax or releaſe, by licence under his hand, any or all of the reſtraints or regulations before directed to be obſerved by the gaoler. *ſ.* 6, 7. How to be demeaned after judgment.

And after ſentence, and until execution, the offender ſhall be fed with bread and water only (except in caſe of receiving the ſacrament; or of any violent ſickneſs or wound, in which caſe ſome known phyſician, ſurgeon, or apothecary may be admitted by the gaoler to adminiſter neceſſaries, his name and place of abode being firſt entred in the books of ſuch priſon). And if the gaoler ſhall offend againſt, or neglect to put in execution, any of the ſaid directions; he ſhall forfeit his office, and be fined 20 l. and impriſoned till paid. *ſ.* 8.

Execution.

The execution of perſons found guilty of wilful murder, ſhall be on the day next but one after ſentence paſſed, unleſs it be *Sunday*, and in that caſe on the *Monday* following. *ſ.* 1.

But if there ſhall appear reaſonable cauſe, the judge, after ſentence pronounced, may ſtay the execution at his diſcretion. *ſ.* 4.

Reſcue.

And if any perſon ſhall by force ſet at liberty or reſcue, or attempt to ſet at liberty or reſcue, any perſon out of priſon, committed for, or found guilty of murder; or reſcue, or attempt to reſcue any ſuch perſon going to, or during execution; he ſhall be guilty of felony without benefit of clergy. *ſ.* 9.

Body not to be buried.

The body, if in *London* or *Middleſex*, ſhall be immediately conveyed by the ſheriff, to the ſurgeons' hall, or ſuch other place as the ſurgeons' company ſhall appoint, to be by them diſſected and anatomized; and if elſewhere, ſhall be delivered to ſuch ſurgeons as the judge ſhall direct, for the purpoſe aforeſaid. *ſ.* 2.

And the judge may direct the body to be hung in chains, or anatomized; but in no caſe whatſoever to be buried, unleſs after the ſame ſhall have been diſſected and anatomized. *ſ.* 5.

At a meeting of the judges to conſider of this act, there was ſome doubt whether hanging in chains might ever be made part of the ſentence; but on debate it was agreed by nine judges, that in all caſes within the act, the judgment for diſſection and anatomizing only ſhould be part of the ſentence: and if it ſhould be thought adviſeable, the judge might afterwards direct the hanging in chains by ſpecial order to the ſheriff, purſuant to the power given by this clauſe. *Foſt.* 107.

Reſcuing the body.

And if after execution, any perſon ſhall by force reſcue or attempt to reſcue the body; he ſhall be guilty of felony, and tranſported for ſeven years. 25 *G.* 2. *c.* 37. *ſ.* 10.

How far the acceſſary ſhall have his clergy.

The principal in murder is ouſted of clergy in all caſes, and the acceſſary before is alſo ouſted of clergy in all caſes, but the acceſſary after is in no caſe ouſted of clergy. 2 *H. H.* 344.

All murders committed by any perſon in the fleet ſhall be puniſhed with death, by the ſentence of a court martial. 22 *G.* 2. *c.* 33. *art.* 28.

VI. Self-Murder.

A *felo de se*, or felon of himself, is a person, who being of sound mind, and of the age of discretion, voluntarily killeth himself. 3 *Inst.* 54. 1 *H. H.* 411. Felo de se.

If a man give himself a wound, intending to be *felo de se*, and dieth not within the year and day after the wound, he is not *felo de se*. 3 *Inst.* 54. Year and day.

Mr. *Hawkins* speaks with some warmth against an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himself must be *non compos* of course; because it is said to be impossible, that a man in his senses should do a thing so contrary to nature, and all sense and reason. But he argues, that if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as for instance, that of a mother murdering her child, which is also against nature and reason: and this consideration instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person *non compos mentis* can be guilty of no crime. 1 *Haw.* 67. Non compos.

And L. *Hale* says, it is not every melancholy or hypochondriacal distemper, that denominates a man *non compos*, for there are few who commit this offence, but are under such infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantick, or destitute of the use of reason, which will denominate him *non compos*. 1 *H. H.* 412.

The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land, without an attainder by course of law. 3 *Inst.* 54. Forfeiture.

Nor shall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the justices in sessions may inquire thereof; for they have power by their commission to inquire of all felonies; and a presentment thereof found before them, entitles the king to the forfeiture. 3 *Inst.* 54, 55. *Dalt. c.* 144.

But nevertheless, the forfeiture shall relate to the time of the wound given, and not to the time of the death, or of the inquisition. 3 *Inst.* 55. *Dalt. c.* 144. 1 *Hale's Pl.* 29. 1 *Haw.* 68.

But L. *Hale*, in his History of the Pleas of the Crown, seemeth to doubt, whether it shall not relate to the time of

the death only, and not the time of the wound given. 1 *H. H.* 414.

Corruption of blood.

Nor doth the offence work any corruption of blood, or loss of dower. 1 *Haw.* 68.

Burial.

By the rubrick in the book of common prayer, before the burial office (confirmed by act of parliament, 13 & 14 *C.* 2. *c.* 4.) a person who hath laid violent hands upon himself shall not have that office used at his interment.

But he shall be buried ignominiously in the highway, with a stake driven through his body. 4 *Black.* 190.

Hops. See Excise.

Horses.

For the duties on horses travelling post; see title Post.

I. Stealing of horses.
II. Buying of stolen horses.
III. Killing or maiming horses in the night.
IV. Regulations for slaughtering horses.
V. Putting stoned horses on commons.
VI. Putting scabbed horses on commons.
VII. Duty on horses.
VIII. Horse dealers to be licensed.

I. Stealing of horses.

BY the 1 *Ed.* 6. *c.* 12. *s.* 10. No person or persons convicted for feloniously stealing (A) of horses, geldings, or mares, shall be admitted to enjoy the privilege of clergy.

And by the 2 & 3 *Ed.* 6. *c.* 33. Whereas there hath been some doubt upon the foregoing clause, whether a person convicted for feloniously stealing of one horse, gelding, or mare, ought to be admitted to enjoy the privilege of clergy, it is declared and enacted, that all and singular person and persons feloniously taking or stealing any horse, gelding, or mare, shall not be admitted to

enjoy the privilege of clergy, but ſhall be put from the ſame.

The reaſon of which doubt is obvious; becauſe a penal ſtatute (and eſpecially where life is concerned) ought not to be extended beyond the expreſs words thereof, but to be taken ſtrictly in favour of the ſubject.

If they be ſtolen out of the ſtable or other curtilage of the dwelling houſe, in the night time, it falls under the denomination of *Burglary*; (B) if in the day time, it falls under the denomination of *Larceny from the houſe:* And in either caſe, there is a reward of 40l. for convicting an offender, and an exemption from offices; as is ſet forth at large under the reſpective titles of *Burglary* and *Larceny*.

II. Buying of ſtolen horſes.

By the 2 & 3 *P. & M. c.* 7. and 31 *El. c.* 12. it is enacted as follows:

The keeper of every fair and market ſhall yearly appoint a certain ſpecial and open place, where horſes ſhall be ſold in any fair or market overt. — Horſe fair.

And ſhall appoint one or more perſons to take toll there, and to keep the ſame place from ten in the forenoon till ſun-ſet. — Toll taker.

And the ſale or exchange in any fair or market overt, of any ſtolen horſe, ſhall not alter the property, unleſs the ſame ſhall be, in the time of the ſaid fair or market, openly ridden, led, walked, driven, or kept ſtanding for one hour together at leaſt, between ten of the clock and ſun-ſet, in the open place of the fair or market, wherein horſes are commonly uſed to be ſold, and not within any houſe, yard, backſide, or other privy or ſecret place. — Horſe to be ſhewed one hour.

Nor unleſs all the parties to the bargain ſhall come together, and bring the horſe to the open place appointed for the toll taker, or for the book keeper where no toll is due. — Seller and buyer to go to the toll taker.

Nor unleſs ſuch toll taker there, or (where no toll is paid) the book keeper or chief officer of the fair or market, ſhall take upon him perfect knowledge of the ſeller, and of his true chriſtian name and ſurname and place of abode, and ſhall enter all the ſame his knowledge in a book to be kept for that purpoſe, or elſe that the ſeller ſhall bring to the toll taker, or other officer aforeſaid, one credible perſon, that ſhall teſtify that he knoweth the ſeller, and his true name, ſurname, myſtery, and dwelling place, and there enter the ſame, and alſo the name, ſurname, myſte- — Sale to be entered.

ry, and dwelling place of him that ſo avoucheth his knowledge.

And the price. Nor unleſs he alſo cauſe to be entred, the very true price.

And marks. And alſo the colour, and one ſpecial mark at leaſt.

Toll to be paid. And alſo the buyer to pay the toll, if any is due; if not, then to give 1 d. for the entry.

Certificate of entry. Which done, the perſon entring the ſame ſhall give to the buyer requiring and paying 2 d. for the ſame, a note in writing of all the contents of ſuch entry ſubſcribed with his hand.

Penalties. Every perſon offending in any of the premiſſes ſhall forfeit 5 l. half to the king, and half to him that ſhall ſue before the juſtices in ſeſſions, or in any ordinary court of record; and the ſale ſhall be void: and the owner may ſeize and take his horſe again, or have an action of detinue or replevin for the ſame.

Owner may claim his horſe within ſix months, and afterwards by paying what he coſt. And if any horſe ſhall be ſtolen, and after ſhall be ſold in open fair or market, and the ſale ſhall be uſed in all points as aforeſaid, yet nevertheleſs ſuch ſale in ſix months after the felony done, ſhall not take away the owner's property, ſo as claim be made in ſix months, where the horſe ſhall be found, before the mayor, if in a town corporate, or elſe before a juſtice near the place where found, and ſo as proof be made before ſuch magiſtrate in 40 days next enſuing by two witneſſes, that the property of ſuch horſe was in the party claiming, and was ſtolen from him within ſix months next before ſuch claim; but the party from whom the ſame was ſtolen, may at all times after, notwithſtanding ſuch ſale, take again the ſaid horſe, on payment, or readineſs to offer to the party who hath poſſeſſion, ſo much as he ſhall ſwear before ſuch magiſtrate that he paid for the ſame.

III. Killing or maiming horſes in the night.

Killing. By the 22 & 23 *C.* 2. *c.* 7. Where any perſon ſhall in the night time maliciouſly kill or deſtroy any horſes; he ſhall be guilty of felony, and may be tranſported, by three juſtices in ſeſſions, for ſeven years.

Maiming. And if any perſon ſhall in the night time maliciouſly wound or hurt any horſes; he ſhall forfeit to the party grieved treble damages, to be recovered by action at law, or before three juſtices.

IV. Regu-

IV. Regulations for ſlaughtering horſes.

By 26 *G.* 3. *c.* 71. Every perſon who ſhall keep or uſe any houſe or place for the purpoſe of ſlaughtering any horſe, mare, gelding, colt, filly, aſs, mule, bull, ox, cow, heifer, calf, ſheep, hog, goat, or other cattle, *which ſhall not be killed for butchers' meat*, ſhall take out a licence at the quarter ſeſſions, which ſhall be ſigned by the juſtices at ſuch ſeſſions; upon a certificate under the hands and ſeals of the miniſter and churchwardens or overſeers, or of ſuch miniſter and two ſubſtantial houſeholders of the pariſh wherein ſuch perſon ſhall dwell; that he is fit and proper to be truſted with the carrying on ſuch buſineſs. And if ſuch licenſed perſon ſhall die, his widow or perſonal repreſentative may carry on the ſaid buſineſs until the next ſeſſions. *ſ.* 1, 2. Licence to be taken at the ſeſſions.

And a copy of the licence ſhall be entered in a book to be kept by the clerk of the peace for that purpoſe; which book any perſon may inſpect, and make extracts therefrom, between the hours of ten and twelve in the forenoon, (*Sundays* excepted,) paying for the ſame 6d. *ſ.* 2. Book to be kept.

And every perſon ſo licenſed, ſhall cauſe his *name* and the words *Licenſed for ſlaughtering horſes purſuant to an act paſſed in the 26th year of his majeſty king* George *the third*, to be painted or fixed over the door or gate of the houſe or place where he ſhall carry on the ſaid buſineſs, in large and legible characters. *Id.* Certain words to be put up.

And ſuch pariſhioners as by law are entitled to meet in veſtry to chooſe pariſh officers, ſhall annually or oftener, appoint one or more perſons to inſpect every ſuch ſlaughtering houſe; and the inſpector ſhall cauſe his *name*, and the words *Inſpector of houſes and places for ſlaughtering horſes*, to be put over his door where he reſides. *ſ.* 5. Inſpectors to be appointed, and their names put up.

And every ſuch licenſed perſon ſhall give ſix hours' notice in writing to ſuch inſpector, previous to his killing any horſe or other cattle, and if brought dead, previous to the flaying thereof, to the intent that the inſpector may attend and take an account and deſcription of the height, age, colour, and marks of every ſuch horſe, mare, gelding, colt, filly, aſs, or mule; and the colour and marks of every cow, &c. brought alive to be killed, or brought dead as aforeſaid; and the ſame ſhall not be killed or flayed but between the hours of 8 in the morning and 4 in the evening between the laſt of *Sept.* and the firſt of *April*; and 6 in the morning and 8 in the evening be- Inſpector's duty.

tween the laſt of *March* and the 1ſt of *Oct.* yearly. And the inſpector ſhall keep a book and enter ſuch deſcription therein, and every perſon carrying on ſuch buſineſs ſhall pay 6d. for every entry: And all perſons may have acceſs to ſuch book between the hours of 8 in the morning and 5 in the evening from the 1ſt of *Oct.* to the laſt of *March*, and between 6 in the morning and 8 in the evening during the other 6 months, paying 6d. for every inſpection.——And if the inſpector ſhall have reaſon to believe that any horſe, &c. is free from diſeaſe and in a ſound and ſerviceable ſtate, or hath been ſtolen or unlawfully come by, he may prohibit the ſlaughtering thereof for any time not exceeding 8 days, and in the mean time ſhall advertiſe the ſame twice or more in ſome newſpaper circulated in the county where ſuch ſlaughter-houſe is ſituate, unleſs the owner ſhall ſooner claim the ſame, or certify to the inſpector that he ſent the ſame to be ſlaughtered; the expence of advertiſing to be paid by the occupier of ſuch ſlaughter houſe; and if he ſhall refuſe to pay the ſame, and ſhall be convicted (C) thereof on the oath of the inſpector, before one juſtice, he ſhall forfeit double the amount thereof, to be levied by diſtreſs. *ſ.* 3. 5.

And every ſuch book kept by the inſpector, ſhall be produced at every quarter ſeſſions, and delivered to the juſtices there aſſembled to be by them examined. *ſ.* 12.

Inſpectors may ſearch ſlaughter-houſes, &c.

And every inſpector may by day or night (but if in the night in the preſence of a conſtable) inſpect any houſe or place kept by any ſuch licenſed perſon, and alſo any ſtable, building, ſhed, yard, or place belonging thereto; and to ſearch if any horſe, &c. is depoſited there, and ſhall take an account thereof. *ſ.* 6.

Perſons bringing cattle, refuſing to give an account of themſelves, may be carried before a juſtice.

And if any perſon who ſhall bring or offer to ſale any horſe, or other cattle as aforeſaid, to any ſuch licenſed perſon, and ſhall refuſe to give a ſatisfactory account of himſelf, or of the means by which the ſame came into his poſſeſſion; or if there ſhall be reaſon to ſuſpect that the ſame hath been ſtolen, or unlawfully obtained; the perſon to whom the ſame ſhall be brought or offered to ſale, and alſo the ſaid inſpector, may ſeize and detain ſuch perſon and horſe, &c. and deliver ſuch perſon to a conſtable, who ſhall convey him before a juſtice; and if the juſtice ſhall upon examination have cauſe to ſuſpect that ſuch horſe, &c. hath been ſtolen, or unlawfully obtained, he may commit ſuch perſon into ſafe cuſtody for any time not exceeding ſix days, in order to be further examined: and

if

if the juſtice ſhall have reaſon to believe that ſuch horſe, &c. hath been ſtolen or illegally obtained, he ſhall commit ſuch perſon to the common gaol or houſe of correction of the place where the offence was committed, to be dealt with according to law. ſ. 7.

An account to be kept of perſons bringing cattle to be ſlaughtered.

And every licenſed perſon ſhall make entry in a book to be kept for that purpoſe, of the name, profeſſion, and place of abode, of the owner of every horſe, &c. brought to be killed or flayed, and alſo of the perſon who ſhall bring the ſame, and the reaſon why brought; which book ſhall at all times be open for the peruſal of the inſpector; and ſuch perſon ſhall produce the ſaid book before any juſtice for the place where ſuch ſlaughter-houſe is ſituate, when required by an order or warrant; and ſhall likewiſe produce the ſame at every quarter ſeſſions. ſ. 4.

Making falſe entries.

And if any licenſed perſon ſhall make any falſe entry in ſuch book, and ſhall be convicted (D) thereof on the oath of two witneſſes, before one juſtice, he ſhall forfeit not exceeding 20l. nor leſs than 10l. by diſtreſs, half to the informer, and half to the poor of the pariſh where ſuch offender ſhall reſide; and in caſe he ſhall not have effects to the amount of the penalty, ſuch juſtice ſhall, after ſale and application thereof as aforeſaid, commit him to the houſe of correction for any time not exceeding three months, nor leſs than one month. ſ. 10.

Slaughtering horſes, &c. without a licence, &c. felony.

And every perſon keeping or uſing any ſlaughter-houſe, who ſhall kill or flay any horſe, &c. for any other purpoſe than for butchers' meat, without taking out ſuch licence as aforeſaid; or without giving notice, and within the hours, and according to the directions of the inſpector as before directed; ſhall be guilty of felony, and ſhall be puniſhed accordingly. ſ. 8.

Lending ſlaughter-houſes.

And if any unlicenſed perſon ſhall occaſionally lend any houſe, barn, ſtable, or other place for the purpoſe of ſlaughtering any horſe, &c. and ſhall be thereof convicted (E) before one juſtice where ſuch perſon ſhall reſide, upon the oaths of two witneſſes, he ſhall forfeit for every offence any ſum not exceeding 20l. nor leſs than 10l. half to the informer, and half to the poor of the pariſh where the offence ſhall be committed; which, if not forthwith paid, ſuch juſtice ſhall commit the offender to the common gaol, or houſe of correction, without bail, for any time not exceeding three months, nor leſs than one month, unleſs the penalty ſhall be ſooner paid. ſ. 13.

Deſtroying or burying hides.

And if any licenſed perſon ſhall throw into any lime pit, or immerſe in lime or any preparation thereof, or rub therewith, or with any other corroſive matter, or deſtroy or bury the hide or ſkin of any horſe, &c. by him ſlaughtered or flayed; or ſhall be guilty of any offence againſt this act for which no penalty or puniſhment is provided, ſuch perſon being convicted thereof, ſhall be deemed guilty of a *miſdemeanor*, and ſhall be puniſhed accordingly. *ſ.* 9.

Perſons excepted.

Provided that nothing herein ſhall extend to any currier, felt maker, tanner, or dealer in hides, who ſhall kill any aged or diſtempered horſe, &c. or purchaſe any dead one for the *bona fide* purpoſe of ſelling, uſing, or curing the hide thereof in the courſe of their reſpective trades: nor to any farrier employed to kill aged and diſtempered cattle: nor to any perſon who ſhall kill any of their own or other cattle, or purchaſe any that are dead, to feed their own hounds or dogs; or to give away the fleſh thereof for the like purpoſe. *ſ.* 14.

Perſons not excepted.

But every collar maker, currier, felt maker, tanner, or dealer in hides, farrier, or other perſon, who ſhall, under colour of their reſpective trades, knowingly, or willingly kill any ſound or uſeful horſe, gelding, mare, foal, or filly, or boil, or otherwiſe cure the fleſh thereof for the purpoſe of ſelling the ſame, ſhall forfeit not exceeding 20 l. nor leſs than 10 l. *ſ.* 15.

Witneſſes.

Witneſſes not appearing, having been duly ſummoned, or refuſing to give evidence, ſhall forfeit 10 l. and in default of payment thereof ſhall ſtand committed to the common gaol, or houſe of correction, for any time not exceeding three months, nor leſs than one month, unleſs ſuch penalty is ſooner paid. *ſ.* 16.

Inhabitants may be witneſſes.

Inhabitants of any pariſh ſhall be deemed competent witneſſes, notwithſtanding their paying to the rates, or being poor perſons relieved, or relievable by the pariſh, and entitled, as ſuch, to receive benefit from the penalties. *ſ.* 17.

V. Putting ſtoned horſes on commons.

No perſon ſhall put in any foreſt, chaſe, moor, heath, common, or waſte (where mares or fillies are uſed to be kept, any ſtoned horſe above the age of two years, not being 15 hands high, within the ſhires and territories of *Norfolk*, *Suffolk*, *Cambridge*, *Buckingham*, *Huntingdon*, *Eſ-*

ſex, *Kent*, *South-Hampſhire*, *North-Wiltſhire*, *Oxford*, *Berkſhire*, *Worceſter*, *Glouceſter*, *Somerſet*, *North-Wales*, *South-Wales*, *Bedford*, *Warwick*, *Northampton*, *Yorkſhire*, *Cheſhire*, *Staffordſhire*, *Lancaſhire*, *Salop*, *Leiceſter*, *Hereford*, and *Lincoln*; nor under 14 hands in any other county (except *Cornwall*, 21 *J.* *c.* 28. *ſ.* 12.), on pain of forfeiting the ſame. 32 *H.* 8. *c.* 13. *ſ.* 2. 10.

But this ſhall not extend to the *marſhes* in the counties of *Cambridge*, *Huntingdon*, *Suffolk*, *Northampton*, *Lincoln*, and *Norfolk*; provided that the horſes be of 13 hands. 8 *El.* *c.* 8. *ſ.* 3.

Alſo nothing herein ſhall extend to any ſtoned horſe, that ſhall happen once in a year to break out of any paſture into ſuch common, ſo that he do not ſtay there above four days after notice given at the dwelling-houſe of the owner, or after publication thereof on a *Sunday* or other feſtival, in the pariſh church where the owner or poſſeſſor of ſuch horſe dwelleth. 32 *H.* 8. *c.* 13. *ſ.* 5. Stoned horſes breaking out of an incloſure.

And any perſon may ſeize any ſuch horſe ſo being under ſize, in manner following: he ſhall go to the keeper of ſuch foreſt, or (out of ſuch foreſt) to the conſtable of the next town; and require him to go with him, to bring ſuch horſe to the next pound; and there to be meaſured by ſuch officer, in the preſence of three other honeſt men to be appointed by the officer; and if he ſhall be found contrary to what is above expreſſed, ſuch perſon may take him for his own uſe. *ſ.* 3. Seizing horſes under ſize.

And if ſuch keeper, or conſtable, or other of the three perſons ſhall refuſe to do as is aforeſaid; he ſhall forfeit 40s. *ſ.* 4.

And all ſuch commons and other places ſhall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or conſtables, reſpectively, on pain of 40s. and they may alſo drive the ſame at any other time when they ſhall think meet. *ſ.* 6. Driving the common.

And if in any of the ſaid drifts, there ſhall be found any mare, filly, fole, or gelding, that ſhall then be thought not able, nor like to grow to be able to bear foles of reaſonable ſtature, or to do profitable labours, by the diſcretion of the drivers, or of the more number of them; they may kill and bury them. *ſ.* 7. Defective mares, &c.

All which ſaid forfeitures ſhall be half to the king, and half to him that ſhall ſue: and the juſtices in ſeſſions, and ſtewards of leets, may inquire thereof; and the ſteward ſhall certify his preſentments to the next ſeſſions. Penalties.

VI. Put-

VI. Putting ſcabbed horſes on commons.

No perſon ſhall have, or put to paſture, any horſe, gelding, or mare, infected with ſcab or mange, in any common, or common fields; on pain of 10s. which offence ſhall be inquirable in the leet, as other common annoyances be, and the forfeitures ſhall be to the lord of the leet. 32 *H.* 8. *c.* 13. *ſ.* 9.

VII. Duty on horſes.

i. Duty on horſes uſed for riding and drawing certain carriages.

ii. Duty on horſes not charged with any other duty, and on mules.

i. Duty on horſes uſed for riding and drawing certain carriages.

By 24 *G.* 3. *c.* 31. an annual duty was impoſed on horſes kept and uſed for the purpoſe of riding or drawing certain carriages, which was put under the management of the commiſſioners of ſtamps.

But by 25 *G.* 3. *c.* 47. The ſame is transferred to the management of the commiſſioners for the affairs of taxes, and is to be aſſeſſed, collected, received, and paid, by ſuch perſons, and in like form and manner, and with ſuch allowances, and under ſuch penalties, forfeitures and diſabilities, and according to ſuch rules, methods, and directions, as are appointed by the ſeveral acts for raiſing the duties on houſes and windows; and all powers, authorities, rules, directions, penalties, forfeitures, clauſes and things, now in force relating thereto, ſhall be in full force in the execution of thoſe acts unleſs altered thereby. *ſ.* 7. 11.

Horſe tax is an annual tax, and to be paid for the whole year.

To be aſſeſſed, collected, &c.] Upon the appeal of the Rev. Mr. *Woodhouſe* of *Dorrington* in *Salop*, the commiſſioners were of opinion that this tax on horſes is a quarterly tax, with quarterly appeals, in like manner as the taxes on houſes, windows, and lights are aſſeſſed, and appeals heard thereon. But the judges were of opinion that the determination of the commiſſioners was wrong (*a*).

(*a*) This and the following caſes under this head, are taken from the printed caſes ſent to the ſurveyors.

Sir

Sir *John Swinburne* of *Capheaton*, in *Northumberland*, was aſſeſſed for ten riding horſes for one year ending *Lady-day* 1789, and having ſold five of the ſaid horſes before 10th *October*, which is the ſecond quarterly day of payment of the window ſeſs, appealed to be diſcharged from the two laſt quarterly payments for five horſes, the ſaid tax on horſes being to be raiſed in the ſame manner as the window duties, reſpecting which partial diſcharges have always been made.—The commiſſioners allowed the appeal, but the judges were of opinion their determination was wrong.

Former duties repealed.

By 38 *G.* 3. *c.* 41. *ſ.* 1, 2. from 5th *April* 1798, all the duties on horſes, and the additional duties on the amount thereof are repealed; and in lieu thereof, there ſhall be aſſeſſed and paid for every *horſe* (*a*) *kept and uſed* by any perſon *for riding*, or for drawing any carriage wheron an exciſe duty was heretofore payable, the following ſums annually:

	£.	s.	d.		Total. £.	s.	d.
For 1 horſe and no more	1	4	0	-	1	4	0
— 2 ditto -	1	16	0	each	3	12	0
— 3 ditto -	2	2	0	ditto	6	6	0
— 4 ditto -	2	5	0	-	9	0	0
— 5 ditto -	2	6	0	-	11	10	0
— 6 ditto -	2	10	0	-	15	0	0
— 7 ditto -	2	11	0	-	17	17	0
— 8 ditto -		——		-	20	8	0
— 9 ditto -	2	11	6	-	23	3	6
— 10 ditto -	2	12	0	-	26	0	0
— 11 ditto -		——		-	28	12	0
— 12 ditto -		——		-	31	4	0
— 13 ditto -	2	12	6	-	34	2	6
— 14 ditto -		——		-	36	15	0
— 15 ditto -		——		-	37	7	6
— 16 ditto -		——		-	41	19	0
— 17 ditto -	2	13	0	-	45	1	0
— 18 ditto -	2	13	6	-	48	3	0
— 19 ditto -	2	14	0	-	51	6	0
— 20 ditto -	2	15	0	-	55	0	0
All above -	2	15	0	for each horſe.			

New duties.

Which duties are to be paid by the perſon keeping and uſing ſuch horſe, and are to be ſubject to all the

By whom to be paid.

(*a*) Under the word *Horſe* is to be underſtood *Horſe*, *Mare*, or *Gelding*.

exemptions

exemptions contained in any act in force. 28 *G.* 3. *c.* 41. *Sched.* C.

Horſes let out by the year, &c. to draw carriages.

And by 29 *G.* 3. *c.* 49. *ſ.* 3. after reciting that doubts had ariſen on whom the duties impoſed by the ſaid act of 24 *G.* 3. *c.* 31. ſhould be chargeable, in reſpect of horſes let out by the year, month, or other period, for drawing any carriage therein enumerated: It is enacted, that the ſaid duties ſhall be paid by the perſon by whom ſuch horſes ſhall be hired and uſed.

Poſt horſe uſed for the ſaddle.

But an innkeeper, who uſes a horſe as a ſaddle horſe occaſionally, and which horſe he takes out and pays a licence for as a poſt-horſe, under the poſt-horſe act, does not exempt him from paying the ſaddle-horſe tax. 13th *December* 1785.

Horſes kept by licenſed horſe dealers.

And where any horſe ſhall be kept by any licenſed horſe dealer for the purpoſe of riding or drawing any carriage, ſubject to the duty aforeſaid, and not for ſale, ſuch horſe ſhall be liable to the duties aforeſaid, to be aſſeſſed and recovered in like manner as for other horſes. 29 *G.* 3. *c.* 49. *ſ.* 6.

Horſes exempted from the duty.

And by 26 *G.* 3. *c.* 79. No perſon who ſhall keep any horſe which ſhall be uſed truly, and without fraud, for the purpoſe of huſbandry, or drawing any carriage (except ſuch as are liable to exciſe duty), or carrying burdens in the courſe of the trade or occupation of the owner thereof, ſhall for ſuch horſe be chargeable with the duty, in caſe ſuch horſe ſhall not be uſed for any other purpoſe of riding except in manner hereafter mentioned; that is to ſay, (1.) When returning from any place to which any load ſhall have been by ſuch horſe drawn or carried, or in going to any place from whence any load ſhall be brought back by ſuch horſe: (2.) Or on account of ſuch horſe having been uſed for riding to procure medical aſſiſtance: (3.) Or for the purpoſe of riding to or from market: (4.) Or to or from any place of publick worſhip: (5.) Or to or from any election of members to ſerve in parliament: (6.) Or to or from any court of juſtice, or meeting of the commiſſioners of taxes. *ſ.* 1.

Whiteſmith, bricklayer, baker, butcher, &c.

Or carrying burdens in the courſe of the trade or occupation of the owner.] *E. Abbott*, whiteſmith, *R. Barrett*, bricklayer, *T. Brame*, baker, *S. Wood*, butcher, and ſeveral others, each of them keeping and uſing one horſe in their reſpective employments, upon their reſpective appeals declared upon oath, that ſuch their horſes were *bona fide* kept by them merely for the purpoſe of carrying on their reſpective trades and occupations, and that without ſuch

trades

trades they ſhould not keep, nor have any uſe for ſuch horſes.—The commiſſioners allowed their appeal; but as the appellants would not make oath that they never had accidentally upon any occaſion riden their ſaid horſes, except for medical aſſiſtance, &c. the ſurveyor was diſſatisfied, and the judges were of opinion the determination of the commiſſioners was wrong, if the appellants did occaſionally ride their horſes for other purpoſes.

Miller, butcher, wheel wright, maltman, &c.

The following perſons were each of them ſurcharged for a riding-horſe, which were uſed in the following manner; (viz.) *W. Digby*, miller, in fetching and carrying griſt to and from his mill, carrying out flour, and going to market, and for no other purpoſe. *J. Elſden*, butcher, for fetching home ſheep, lambs, and other goods, carrying out meat, and in going to farm houſes and fairs to buy cattle, and for no other purpoſe. *J. Thurſton*, miller, for drawing in a cart to carry out meal and flour, riding to and from market, and other purpoſes in his buſineſs, and occaſionally to go and ſee a friend. *J. Ellis*, wheelwright, for drawing in a cart, and carrying ploughs, harrows, and other things in his wheelwright buſineſs, and occaſionally riding to market to buy goods, and bringing home the ſame, and for no other purpoſe. *J. Baldwin*, yeoman, occupier of a farm of 38l. a-year, on which is a ſmall *malt-houſe*, uſes his horſe for drawing in a cart, and carrying out malt, and occaſionally riding to church and market, and for no other purpoſe. *W. Tiffing*, miller and baker, for drawing in a cart, and carrying out meal, flour, and bread, and riding to and from market, and occaſionally for collecting his debts, and for other purpoſes in his ſaid trades. There were many others in the like predicament. The commiſſioners thought none of them liable; but the judges were of opinion their determination was wrong as to *J. Thurſtone* and *W. Tiffing*, and right as to all the reſt.

Alſo in the caſe of *J. Cracknell*, who occupies a farm of 34l. a-year, rides his horſe to buy malt, which he retails in ſmall quantities, and carries it out on his horſe, and rides to purchaſe ſuckling calves, which he fattens himſelf, and never uſes his horſe for any other purpoſe. *J. Maſkell*, butcher, rides his horſe to buy calves, ſheep, &c. which he uſually brings home on his horſe, and after killing them, carries the ſame out to his cuſtomers, and for no other purpoſe. Theſe perſons were ſurcharged for each a horſe, to which they appealed; but the commiſſioners thinking that *Cracknell* does not always buy his malt at a

publick

publick market, but rides to different makers of malt, and purchaſes of ſeveral perſons at their houſes. And that *Maſkell* does not always bring home the calves, ſheep, &c. the ſame day he buyeth them, but goeth for them on a future day; did not allow their appeal; and the judges were of opinion their determination was right.

Horſe uſed for riding by the ſide of a waggon.

D. Clark, ſervant to *B. Denton*, waggoner, appealed againſt a ſurcharge for one horſe, which he keeps for the ſole purpoſe of riding by the ſide of a common ſtage waggon to and from *London*, and uſes the ſaid horſe for no other purpoſe. The commiſſioners allowed his appeal; but the judges were of opinion their determination was wrong.

Riding to or from church or market.] *T. Overend*, butcher, *D. Tyas*, cordwainer, *J. Gaunt* and *J. Hurſt*, worſted manufacturers, and *J. Houghland*, farmer, as well as owner of ſome ſmall eſtates, all in *Staincroſs* wapentake, in the *Weſt Riding* of *York*, were each charged with the duty for one riding horſe, from which they appealed; alleging, that they never ride any horſe kept by them but to church and market, and each of them took the following oath: "I *A. B.* do ſwear, that I, or any other perſon "with my knowledge, never rode any horſe, mare, or "gelding, kept by me, from the 10th of *October* 1784, to "the 10th of *October* 1785, except to or from market or "church, or other place of publick worſhip, or to or "from plough or paſture." Whereupon the commiſſioners diſcharged the ſaid ſeveral perſons from the duty; with which the ſurveyor was diſſatisfied, alleging, that the ſaid *Overend* rode his horſe to ſeveral neighbouring towns and villages to purchaſe calves and other cattle, when no market was kept; and *Tyas* to the tanners to buy leather, and to towns and villages to ſell his ſhoes when made; and *Gaunt* and *Hurſt* to ſeveral parts of the kingdom, where no publick market is kept, to purchaſe wool, and after to the walk-mill with their pieces, and other places with their worſted to weave, &c.; and *Houghland* to the mill with corn to grind for his family's uſe, or to the ſmith's ſhop with his horſes to ſhoe; which the ſurveyor apprehends is giving too extenſive a ſcope to the word *market*, and cannot be conſtrued within the meaning of the act, which ſays, "And to no other place, or for no "other purpoſe of riding." The judges were of opinion, that the determination of the commiſſioners was wrong as to all except *Houghland*. 18th *July* 1786.

Thomas Beverley, a freeholder of 5l., *John Coates*, a farmer of 80l. and *John Clarkſon*, a copyholder of 40l. a-year, ſeverally

ſeverally appealed againſt a ſurcharge made by the inſpector who had charged them to the horſe duty; being ſworn, it appeared, that their horſes were kept for the purpoſe of huſbandry, and that they *never rode them but to church or market*. The commiſſioners thinking them not liable, relieved them from the ſurcharge; but the judges were of opinion their determination was wrong.

Poor excepted.

And no duty ſhall be paid for any horſe, the owner whereof, by reaſon of his poverty, is exempted from the uſual taxes to church and poor. 26 *G.* 3. *c.* 79. *ſ.* 2.

Perſons occupying an eſtate and farm under 70*l.* a-year.

And no perſon occupying a *farm*, the rent of which is leſs than 70*l.* a-year, and making a livelihood ſolely thereby; or occupying *his own eſtate ſolely*, or *together* with a *farm*, the value of which in the whole ſhall be leſs than equivalent to a farm of the rent of 70*l.* a-year, (reckoning the value of every ſuch eſtate occupied by the owner thereof, as equivalent to *double* the like amount of the rent of any rented farm,) and making a livelihood ſolely by ſuch eſtate, or by ſuch eſtate and farm jointly ſhall be chargeable with any of the duties impoſed by this or any other act, on account of any horſe being occaſionally uſed in riding, provided ſuch horſe be *bonâ fide* kept, and uſually employed for the purpoſes of huſbandry. 36 *G.* 3. *c.* 16. *ſ.* 6.

Occupying a farm of leſs than 70*l. a-year.*] *G. Hart* and *J. Child* were charged for one horſe each, againſt which they appealed. It appeared that they each occupy an eſtate of their own the value whereof reſpectively is about 40*l.* a-year, and ride their horſes only for farming and managing ſuch eſtates. The commiſſioners would not relieve them, thinking them not within the above clauſe exempting perſons occupying a farm of leſs than 70*l.* a-year; and the judges were of opinion their determination was right.

Making a livelihood ſolely thereby.] *R. Whalley* of *Dent* in *Yorkſhire*, being aſſeſſed for a horſe, appealed, alledging, that he is not liable, having a ſmall eſtate of his own, let two years ſince for 17*l.* 10*s.* a-year, out of which he pays his mother an annuity of 6*l.* a-year for life. He has no other employment or calling, but gets his livelihood ſolely by occupying this eſtate. Upon which the commiſſioners thought him not liable; but the ſurveyor not being ſatisfied, as he had an intereſt of 11*l.* a-year in the ſaid eſtate, requeſted a caſe; and the judges were of opinion the determination of the commiſſioners was wrong.

Purpoſes of huſbandry] *John Oſmond* of *Bieceſter* in *Oxfordſhire*, appealed againſt a ſurcharge of one horſe; he is a farmer and butcher, and keeps four horſes, two for riding, and the others for packing and drawing, and thinks himſelf liable for two horſes only, the others being uſed in his farming buſineſs, and for packing his meat on. The commiſſioners allowed the appeal; but the ſurveyor thought the appellant liable to be charged for three horſes, as they are occaſionally all rode, and not any two kept for the purpoſe of packing and drawing alone. The judges were of opinion, that the determination of the commiſſioners was wrong. 18th *July* 1786.

Yeomanry cavalry.

Provided, that neither this act, nor thoſe of 24 *G.* 3. *c.* 31. and 29 *G.* 3. *c.* 49. ſhall extend to charge any non-commiſſion officer or private man ſerving in the *yeomanry cavalry* raiſed by virtue of 34 *G.* 3. *c.* 31. for one horſe only, during his continuance in ſuch ſervice; and if he keeps more than one horſe, he ſhall be charged for one horſe leſs than the number by him kept. 36 *G.* 3. *c.* 16. *ſ.* 4.

Provided alſo, that in order to exempt ſuch perſons, the commanding officer of ſuch corps, ſhall annually before 20th *April*, make out his certificate of all non-commiſſioned officers and private men, containing their reſpective names and places of abode, who ſhall, for ſix weeks immediately preceding the date of ſuch certificate, have punctually attended at the places of exerciſe of ſuch corps, and ſuch certificate, ſigned by ſuch commanding officer, ſhall be delivered to the ſurveyor of the diſtrict, with an affidavit annexed thereto, verifying the ſignature of ſuch commanding officer; and provided alſo, that the perſon claiming to be ſo exempted, ſhall be inſerted and deſcribed in ſuch certificate as an effective man in actual ſervice. *ſ.* 5.

Volunteer corps.

Provided always, that no perſon who ſhall ſerve in any volunteer corps, and ſhall provide a horſe for that ſervice; or who ſhall at his expence furniſh a horſe for any perſon ſerving in any ſuch corps, ſhall be chargeable for ſuch horſe with the duty hereby impoſed. 38 *G.* 3. *c.* 41. *ſ.* 8.

And in the certificate of the commanding officer of any ſuch corps in which any ſuch perſon ſhall ſerve, not only the ſeveral perſons ſerving, but alſo the ſeveral perſons who ſhall furniſh any horſe for any other perſon ſo ſerving, ſhall be inſerted; and that affidavits of the ſeveral perſons ſerving in ſuch corps, for whom horſes ſhall be furniſhed, declaring by whom furniſhed, ſhall in every ſuch caſe be annexed to ſuch certificate. *ſ.* 9.

And

And no commiſſioner ſhall act until he hath taken the oaths requiſite to qualify him as a commiſſioner of the window duties, and alſo the following oath, to be adminiſtered by two commiſſioners. Commiſſioners' oaths.

I A. B. *do ſwear, that I will truly and faithfully execute the office of a commiſſioner, according to an act made in the 25th year of the reign of king* George *the third*, for transferring the receipt and management of certain duties therein mentioned, from the commiſſioners of exciſe and commiſſioners of ſtamps reſpectively, to the commiſſioners for the affairs of taxes; and alſo for making further proviſions in reſpect to the ſaid duties ſo transferred; *and will determine, without favour or affection, upon all appeals that ſhall be brought before me under the ſaid act, according to the beſt of my ſkill and knowledge. So help me God.*

And if any perſon ſhall act as a commiſſioner (except in adminiſtering the ſaid oaths) before he ſhall have taken ſuch oaths as aforeſaid, he ſhall forfeit 100l. 25 *G.* 3. *c.* 47. *ſ.* 13. 29 *G.* 3. *c.* 49. *ſ.* 12.

And the commiſſioners, in their precepts for naming aſſeſſors for the window duties, ſhall give notice that ſuch perſons are alſo appointed aſſeſſors for the duty on coaches and horſes. 25 *G.* 3. *c.* 47. *ſ.* 19. 29 *G.* 3. *c.* 49. *ſ.* 13. Appointment of aſſeſſors.

And every aſſeſſor, ſurveyor, or inſpector, ſhall take the following oath, to be adminiſtered by two commiſſioners: Oath to be taken by aſſeſſors, ſurveyors, and inſpectors.

I A. B. *do ſwear* [or *affirm*] *that in making the aſſeſſment, which by authority of an act made in the 25th year of the reign of king* George *the Third*, for transferring the receipt and management of certain duties therein mentioned, from the commiſſioners of exciſe and commiſſioners of ſtamps reſpectively, to the commiſſioners for the affairs of taxes; *I will charge all perſons according to the beſt of my ſkill and knowledge. So help me God.*

And if any ſuch perſon ſhall preſume to act before he ſhall have taken ſuch oath, he ſhall forfeit 20l. 25 *G.* 3. *c.* 47. *ſ.* 18. 29 *G.* 3. *c.* 49. *ſ.* 15.

And ſuch aſſeſſors ſhall, within 14 days after their appointment, give or leave at the dwelleng-houſe of every perſon within his limits, keeping any ſuch carriage as aforeſaid, or any horſe, liable to the ſaid duties, notice in writing, requiring them to prepare and produce within 14 days Notice to be given to perſons keeping carriages or horſes, to deliver liſts thereof;

next enſuing, liſts in writing of the number of carriages liable to the ſaid duties kept and uſed by him within ſuch limit; the ſaid liſts to deſcribe the greateſt number of ſuch carriages kept at any one time in the courſe of the year ending on the 5th day of *April* preceding ſuch notice, and to expreſs the denomination of each carriage, and its number of wheels, diſtinguiſhing which are kept for private uſe, and which for hire, and which are uſed as publick ſtage coaches; and another liſt in writing of the number of horſes liable to the ſaid duties on horſes, kept and uſed by him within ſuch limits, ſuch liſt to contain the greateſt number by him kept and uſed in the courſe of the year ending on ſuch preceding 5th day of *April* as aforeſaid; and every perſon ſhall, after ſuch notice ſo given or left, make out the ſaid liſts accordingly, and ſign the ſame with his own hand, and deliver them to ſuch aſſeſſor, at any time after 14 days from ſuch notice, when he ſhall call for the ſame. And if any ſuch perſon ſhall neglect or refuſe to make out, ſign, and deliver ſuch liſts within the time before mentioned, he ſhall forfeit 10l.; and ſuch aſſeſſor ſhall, from the beſt information he can obtain, make an aſſeſſment upon ſuch perſon of the number of carriages and horſes liable to the ſaid duties ſo kept by him, diſtinguiſhing them in manner as aforeſaid; and ſuch aſſeſſment ſhall be final and concluſive upon the perſon thereby charged, who ſhall not be at liberty to appeal therefrom, unleſs ſuch perſon ſhall prove that he was not at his dwelling-houſe at the time of the delivery of ſuch notice, nor between that day and the time limited for delivering ſuch liſts to the aſſeſſor; or unleſs ſuch perſon ſhall alledge and prove ſuch other excuſe for not having delivered the ſame, as the ſaid commiſſioners ſhall think reaſonable and ſufficient. 25 *G.* 3. *c.* 47. *ſ.* 20. 27.

who ſhall deliver ſuch liſts on pain of 10l. If no liſt is delivered the aſſeſſor to make an aſſeſſment,

which ſhall not be appealed againſt.

Kept and uſed in the courſe of the year ending on the 5th day of April preceding] Mr. *Woodhouſe* being charged for five horſes kept for riding, &c. on his oath ſaith, that he had not kept or uſed more than four ſuch horſes at any time during the current year (commencing the 5th *April* laſt, and ending the 5th *April* next,) for which time the aſſeſſment is made; but ſaith, that he did keep five ſuch horſes in the year previous to the 5th *April* laſt, for which he paid the duty laſt year. The commiſſioners allowed his objection, and ordered the aſſeſſment to be regulated, ſo that he ſhould only pay for four; but the ſurveyor inſiſted that the appellant ſhould be aſſeſſed for five horſes this preſent current year, notwithſtanding he has kept but four

since 5th *April* last, and although he paid for five the last year, insisting that the meaning of the act is, to assess persons the current year for the number of horses they kept the year preceding. The judges were of opinion that the determination of the commissioners is wrong. 23d *May* 1794.

Assessors are not bound by such lists.

Nevertheless, such assessors shall not be bound by such lists so delivered to them as aforesaid, but shall be at liberty, if they find any carriage or horse omitted in such lists, to surcharge the same, and make a true assessment upon every person keeping any such carriage or horse within their respective districts, of the real number of carriages or horses kept by each such person. *s.* 24.

Carriages or horses omitted, to pay double duty.

And if any assessor, surveyor, or inspector, shall make a surcharge in respect of any carriage or horse omitted in such list, such surcharge shall be made after the rate of double the duty so omitted, one moiety of such surcharge shall go to the person making the same. *s.* 28.

Where no assessors are appointed, or neglect their duty.

And if at any time there shall be a neglect of appointment of assessors, or if they shall neglect what is required of them by this act, the surveyor or inspector of the duties on houses and windows, is authorized and required to do and perform such and the like services as are required from such assessors. *s.* 17.

Carriages or horses kept in different districts.

And to the end that no person may pay the said duties in more districts than one within the same year, every person who shall mean to pay for any carriage or horse in another district, shall specify in a list or declaration the particular parish or district wherein he means to pay for such carriage or horse; and the said assessors shall enter the said last-mentioned list at the end of their several assessments, and shall deliver the same to the surveyor of such district, in order that he may transmit the same to the commissioners of taxes. And if any person, having been assessed in one district, shall again be assessed in another for the same carriage or horse, the commissioners within such latter district, on application for that purpose, are required to alter such assessment, on proof being given that such person hath paid the duty in another place. *s.* 22, 23.

Lodgers or inmates.

And whereas difficulties may arise in discovering lodgers or inmates in any house, who keep carriages or horses liable to the said duties; it is therefore enacted that the inhabitant householder of any house in which there shall be any lodger or inmate as aforesaid, shall, within a week after he shall be required by notice in writing left at his house by any assessor, surveyor, or inspector, deliver to, or

leave for ſuch aſſeſſor, a liſt in writing of every ſuch lodger or inmate who ſhall keep any carriage or horſe liable to the ſaid duties, containing his chriſtian and ſurname, and an account of every ſuch carriage or horſe to the beſt of his knowledge; and if he ſhall refuſe to deliver ſuch liſt, or wilfully omit or miſrepreſent any deſcription which ought to be contained therein, he ſhall forfeit 20l. *ſ.* 29.

Aſſeſſors to deliver their aſſeſſments in 3 months.

And ſuch aſſeſſors ſhall make and deliver in writing ſuch aſſeſſments within their reſpective limits to the ſaid commiſſioners, within three months next after the time of their ſo being appointed aſſeſſors; and two of the ſaid commiſſioners ſhall, within one month next after, or as ſoon after as conveniently may be, ſign ſuch aſſeſſments, and alſo ſuch ſurcharge as ſhall have been made in the mean time, teſtifying their allowance of the ſame; and ſhall appoint two of the perſons named in ſuch aſſeſſment to be collectors, or any other two ſuch perſons as they ſhall think able and reſponſible; and ſhall deliver ſuch aſſeſſments unto the ſaid collectors, who are required to collect the ſaid duties ſo aſſeſſed, and to give acquittances for the ſame, and for the payment thereof to the receiver general, the pariſh or place for which they are ſo appointed ſhall be anſwerable. *ſ.* 25.

Collectors to be appointed.

Surveyors, &c. may inſpect liſts.

And ſuch ſurveyor or inſpector may inſpect any ſuch liſts and aſſeſſments before the ſame be ſigned, and alter and amend the ſame if they ſhall ſee juſt cauſe; and thoſe perſons in whoſe cuſtody ſuch liſts and aſſeſſments ſhall be, are required, upon the requeſt of ſuch ſurveyor or inſpector, to produce the ſame; and if ſuch ſurveyor or inſpector ſhall, upon his ſurvey, diſcover that any perſon who ought to have been charged with the ſaid duties, ſhall have been omitted or under-rated, he ſhall certify the ſame in writing under his hand, together with an account of every ſuch carriage or horſe ſo omitted, by way of ſurcharge, to two commiſſioners, in order to have the ſame rectified in the ſaid aſſeſſment, and to cauſe the duties to be levied accordingly. *ſ.* 26.

Penalty of a falſe ſurcharge.

Provided always, that if upon appeal it ſhall appear, that ſuch ſurcharge was falſely and vexatiouſly made, ſuch ſurveyor, aſſeſſor, or inſpector, ſo ſurcharging ſhall forfeit and incur ſuch penalties and puniſhments, as in and by the ſaid acts relating to the duties on houſes and windows, are inflicted on ſuch perſons for neglect of duty. *ſ.* 32.

Appeal.

If any perſon ſhall think himſelf over rated by any aſſeſſment, charge, or ſurcharge, he may, giving ten days' notice

tice

tice thereof to the ſurveyor or one aſſeſſor, appeal to the ſaid commiſſioners or any two of them, who are to hear and determine the ſame; except ſuch perſon appealing ſhall have omitted to deliver ſuch liſt as aforeſaid, and ſhall not aſſign ſufficient cauſe for ſuch omiſſion, in which caſe the ſaid commiſſioners may diſmiſs the appeal; provided that at the time of hearing ſuch appeal, a liſt ſhall be produced upon the oath of the appellant, containing the greateſt number of carriages and horſes ſubject to the ſaid duty, which have been kept by him within the diſtrict within the year preceding, with ſuch deſcription as to other diſtricts as aforeſaid; and ſuch appeals ſhall be heard on the days appointed for hearing appeals reſpecting the duties on houſes and windows; and the commiſſioners ſhall not make any abatement in ſuch charge or ſurcharge, unleſs it ſhall appear upon oath that ſuch perſon is over-rated; nevertheleſs they may ſtrike off the penalty, on application of ſuch appellant, although they confirm the ſurcharge, if it ſhall appear there was any doubt whether ſuch carriage or horſe was chargeable or not, and was not omitted out of ſuch liſt with any intention to defraud the revenue. *ſ.* 30. 31.

Appeals once determined to be final.

And all appeals once heard and determined by two commiſſioners, on the days appointed for hearing appeals, ſhall be final and concluſive; ſubject nevertheleſs, if any perſon is diſſatisfied, to an appeal to the judges, in the ſame manner as for the duties on houſes and windows. *ſ.* 33, 34.

Penalties how to be recovered.

All penalties above 20l. are to be recovered in the courts at *Weſtminſter*, but penalties not exceeding 20l. may be recovered before two juſtices, on confeſſion, or oath of one witneſs, by diſtreſs, half to the king, and half to the perſon who ſhall inform and ſue for the ſame; and for want of ſufficient diſtreſs, the offender ſhall be ſent to priſon, for any time not exceeding ſix, nor leſs than one month. *ſ.* 36. 39.

Conſtables to be aiding and aſſiſting.

All conſtables are to be aiding and aſſiſting in the execution of theſe acts, and are to obey and execute ſuch precepts as ſhall be to them directed by the ſaid commiſſioners. 25 *G.* 3. *c.* 47. *ſ.* 40. 29 *G.* 3. *c.* 49. *ſ.* 20.

Regulations by 38 *G.* 3. *c.* 41

By 38 *G. c.* 41. further regulations are made reſpecting the duties on ſervants, carriages, horſes, mules, and dogs, as followeth:

Liſts to be prepared and ſigned.

Every perſon who ſhall keep any *male ſervant*, *carriage*, *horſe*, *mule*, or *dog* in the courſe of the year ending on 5th *April* 1798, ſhall on or before the 30th *June* 1798, without any previous notice, prepare a liſt in writing ſigned by him, or on his behalf, made out in the following form:

No.
County of
Parish of

Surveyor.

The Account of the greatest Number of Servants, Carriages, Horses, Mules, and Dogs, which have been kept at any one Time between the 5th Day of April 1797 and the 6th Day of April 1798, by me of and also the several other Places where I am or ought to be assessed to the Duties on Inhabited Houses, or on Windows or Lights, or any of the Duties before-mentioned, viz.*

Places where the Duties are to be paid, with the Number against each.	1 Servants.	2 Four wheel carriages.	3 Two wheel car riages.	4 Horses for riding, or for drawing carriages.	5 Horses for other purposes.	6 Horses and mules exempted	7 Mules.	8 Dogs.	9 Taxed carts.
In the above Parish . .									
Other Places, *viz.*									
Parish of County of									
Parish of County of									
Parish of County of									
Parish of County of									
Total									

Witness my Hand this Day of 1798.

* If either be in a City or Town then the Number of the House and the Street must be inserted.

No.
County of
Parish of

Surveyor.

Received this Day of 1798,
of of the above Parish, the List of Servants, Carriages, Horses, Mules, and Dogs, corresponding with the Letter and Number in this Receipt, for

Surveyor.

Witness my Hand,

which liſts ſhall, by perſons reſiding within the bills, be delivered at the chief office of taxes, elſewhere, to the ſurveyor of the diſtrict, or ſuch other perſon as the ſurveyor, with the approbation of the ſaid commiſſioners, ſhall appoint, and every ſuch perſon ſhall be liable to be aſſeſſed, for the year in which ſuch liſt ſhall or ought to be delivered, according to the greateſt number of ſuch ſervants, carriages, horſes, mules, and dogs, kept or uſed by him as aforeſaid, within the period in ſuch liſt mentioned; on pain of forfeiting 50 l. *ſ.* 10.

To whom to be delivered.

Provided always, that no perſon ſhall be compelled to travel for the delivery of any liſt in purſuance of this act, more than 10 miles from his habitation, or to the neareſt market town. *ſ.* 11.

Not to travel more than 10 miles to deliver ſuch liſts.

Provided alſo, that nothing herein contained, ſhall vary the regulations contained in any act reſpecting the liſts required to be delivered to the aſſeſſors of any pariſh or place. *ſ.* 17.

This act not to vary regulations of former acts reſpecting the delivery of liſts.

Provided always, that no perſon who ſhall have returned the blank liſts delivered to him by ſuch pariſh aſſeſſors, filled up according to the directions of this act, with the greateſt number of ſervants, carriages, horſes, mules, and dogs, retained by him, or by any perſon lodging in his houſe, ſhall be liable to prepare and deliver in the liſts abovementioned. *ſ.* 19.

Perſons having returned blank liſts filled up, need not deliver others.

And every perſon who after the 5th *April* 1798 ſhall keep any ſuch ſervant, carriage, horſe, mule, or dog, (not being in the place of a former one,) ſhall, within 20 days, cauſe notice to be given at ſuch chief office, or to the ſurveyor of the diſtrict, as the caſe may require, of the number of ſuch ſervants, carriages, horſes, mules, and dogs, and of the pariſh or place where he reſides, deſcribing in ſuch notice every ſervant retained by him, by his proper name, and the capacity in which employed; and alſo every ſuch carriage by its uſual name and deſcription, and diſtinguiſhing the number of wheels; and alſo ſuch as are chargeable as a taxed cart; and alſo every ſuch horſe, diſtinguiſhing ſuch as are deſcribed in 24 *G.* 3. *c.* 31. from thoſe in 36 *G.* 3. *c.* 15. and alſo deſcribing every mule, and dog, diſtinguiſhing the kind of dog where one only is kept; on pain of forfeiting 50 l. *ſ.* 12.

Perſons beginning to keep ſervants, &c. after 5th *April* 1798.

And every perſon required to deliver ſuch liſts as aforeſaid, having divers places of reſidence, ſhall deliver a liſt at each of ſuch places where he intends to pay any of the duties aforeſaid, and alſo a liſt of the whole number

Perſons having divers places of reſidence.

of ſervants, &c. kept by him within the kingdom, and ſhall ſpecify the number intended to be paid for within each diſtrict, and ſhall alſo at the ſame time make declaration to be inſerted in ſuch liſt, and ſigned by him, ſpecifying the particular county, pariſh, or place, wherein the ſame are kept, and the number of each deſcription kept within each reſpectively, and where intended to be paid for if at any other pariſh or place than where ſuch liſt ſhall be delivered; on pain of forfeiting 50 l. *ſ.* 13.

Liſts to be renewed annually.

And every perſon liable to deliver any ſuch liſt as aforeſaid, ſhall between 5th *April* and 30th *May* yearly, prepare and deliver a liſt of the greateſt number of ſuch ſervants, carriages, horſes, mules, and dogs, kept by him at any one time in the courſe of the year in which the former liſt was or ought to have been delivered as aforeſaid, and in the form before preſcribed; and ſhall renew the ſame annually, ſo long as ſuch perſon ſhall be liable to any of the ſaid duties; on pain of forfeiting 50 l. *ſ.* 14.

Perſons delivering liſts to receive receipts.

And every perſon who ſhall deliver any ſuch liſt as by this act directed, ſhall receive a receipt for the ſame in the form aforeſaid, which ſhall be deemed proof of the delivery of ſuch liſts, and if the perſon receiving any ſuch liſt, ſhall neglect or refuſe to deliver ſuch receipt, he ſhall forfeit 20 l. *ſ.* 15.

Houſeholders and livery ſtable keepers to enter in a book an account of ſervants, &c. kept by lodgers, or carriages, &c. ſtanding at livery; and to deliver liſts thereof.

And every houſeholder wherein any lodger or inmate ſhall reſide keeping any ſervant, carriage, horſe, mule, or dog, liable to any of the duties aforeſaid, ſhall enter in a book an account of the ſame; and every livery ſtable-keeper, or other perſon receiving any horſe or carriage to ſtand at livery, or delivered to him to be kept, ſhall alſo enter in a book an account of every ſuch carriage or horſe ſo ſtanding or kept, and the perſon keeping ſuch account, ſhall within 20 days of 5th *January*, 5th *April*, 5th *July*, and 5th *October* in every year, deliver a liſt in writing of every ſuch lodger or inmate reſiding in his houſe; and of every proprietor of any carriage, horſe, or mule ſtanding at livery, or delivered to him to be kept as aforeſaid; and ſuch liſt ſo to be delivered, ſhall expreſs the chriſtian and ſurname of every ſuch lodger or inmate, and alſo of every ſervant; and alſo of the proprietor of ſuch carriage, horſe, or mule; and every ſuch liſt ſhall contain the greateſt number kept by every ſuch perſon to the beſt of his knowledge and belief; on pain of forfeiting 50 l. *ſ.* 18.

Provided always, that the penalties by this act impoſed for omitting any liſt hereby required, any ſervant, carriage, horſe, mule, or dog, which ought to have been returned as aforeſaid, ſhall not be ſued for where ſuch perſon, before the commencement of ſuch ſuit, ſhall have been ſurcharged, and aſſeſſed in double the duty. *ſ.* 16. Penalty for omiſſions in liſts, not to be ſued for, where the party has been ſurcharged.

All penalties and forfeitures by this act impoſed may be recovered in the courts at *Weſtminſter*, and if ſued for within ſix calendar months ſhall be applied half to the king, and half with full coſts to him who ſhall inform or ſue. If after ſix months the whole ſhall go to the king. *ſ.* 22, 23. Penalties how to be recovered and applied.

By 39 *G.* 3. *c.* 74. The duties on horſes let out to hire for travelling poſt, may be let to farm; for which ſee Poſt.

ii. Duty on horſes not charged with any other duty, and on mules.

By 36 *G.* 3. *c.* 15. certain duties were impoſed upon horſes not chargeable with any other duty, and on mules, which by 38 *G.* 3. *c.* 41. are repealed; and the following duties granted in lieu thereof: Former duty repealed.

For every *horſe*, *mare*, or *gelding*, kept by any perſon and not charged with any of the duties aforeſaid; and alſo for every *mule*, ſhall be paid 6*s.* 38 *G.* 3. *c.* 41. *Sched.* D. New duty.

The ſaid duty to be paid by the perſon keeping ſuch horſe or mule, and to be ſubject to all the exemptions contained in any act in force. *Id.*

Which ſaid duty ſhall be under the management of the commiſſioners for the affairs of taxes. 36 *G.* 3. *c.* 15. *ſ.* 2. To be under the commiſſioners for taxes.

And the ſeveral aſſeſſors ſhall, within 14 days after their appointment yearly, give or leave notice in writing to or for every perſon keeping any horſe not chargeable with any other duty as aforeſaid, or any mule, within their reſpective limits, at his dwelling houſe or place of abode, to prepare and produce, within 14 days next enſuing the day of giving ſuch notice, one liſt in writing which ſhall contain (over and beſides the number of horſes, carriages, and ſervants liable to the duties on horſes, carriages, and ſervants reſpectively, and alſo of perſons who have worn hair powder,) the greateſt number of horſes not chargeable as aforeſaid, and alſo of mules of whatever age, and whether in uſe or not, by him kept in the courſe of the year, ending Aſſeſſors to give notice to perſons keeping horſes or mules, who are to deliver liſts thereof

on

on the 5th day of *April* preceding ſuch notice, diſtinguiſhing therein the number liable to the duty of 2s. hereby impoſed; and the number kept and uſed for the purpoſe of riding or drawing liable to the ſaid former duties, or any duty to be impoſed this ſeſſion of parliament; and alſo ſuch as are claimed to be exempted from the duty hereby impoſed; and every perſon ſhall make out the ſaid liſt accordingly, and ſign the ſame, and ſhall deliver, or cauſe the ſame to be delivered to ſuch aſſeſſor, at any time after 14 days from the ſaid notice being given, when he ſhall call for the ſame; or in default thereof, ſhall leave ſuch liſt at the place mentioned in ſuch notice at the abode of any of the aſſeſſors, within ten days after any ſuch aſſeſſor ſhall have ſo called for the ſame. *ſ.* 4.

Horſes claimed to be exempted, to be included in ſuch liſt.

And all horſes, *notwithſtanding any claim of exemption*, ſhall be included in ſuch liſt, and the owner thereof ſhall, upon demand, produce ſuch horſe to the aſſeſſor, ſurveyor, or inſpector, or at any meeting of the commiſſioners, to be admeaſured, or otherwiſe examined reſpecting all or any of the particulars hereafter mentioned; and if ſuch owner ſhall neglect or refuſe on demand to produce ſuch horſe as aforeſaid, for which any exemption ſhall be claimed, ſuch owner ſhall be ſurcharged with double duty, and ſhall not be relieved therefrom, or any part thereof, unleſs it appear to the ſaid commiſſioners on oath, that ſuch horſe was duly inſerted in ſuch liſt, and that ſuch owner ought not to have been rated for ſuch horſe. *ſ.* 11.

Where no liſt is delivered, the aſſeſſor to make an aſſeſſment.

And if any perſon ſhall neglect or refuſe to make out, ſign, and deliver ſuch liſt within the time aforeſaid, ſuch aſſeſſor ſhall, from the beſt information he can obtain, make an aſſeſſment upon ſuch perſon in reſpect of every horſe or mule kept by him as aforeſaid, which aſſeſſment ſhall be final and concluſive upon the perſons thereby charged, who ſhall not be at liberty to appeal therefrom, unleſs he prove that he was not at his dwelling houſe or place of abode at the time of the delivery of ſuch notice, nor between that day and the time limited for delivering ſuch liſt as aforeſaid; or unleſs he ſhall allege and prove ſuch other excuſe as the commiſſioners ſhall think reaſonable. *ſ.* 4.

Aſſeſſors not bound by the liſts delivered; but may ſurcharge.

But ſuch aſſeſſor ſhall not be bound by ſuch liſt ſo delivered as aforeſaid, but may, if he find upon examination, that any horſe or mule liable to the ſaid duties, is omitted, ſurcharge the ſame, and make a true aſſeſſment of the real number of ſuch cattle kept by each ſuch perſon. And ſuch ſurcharge ſhall be made after the rate of double the duty,

and

and the aſſeſſor, ſurveyor, or inſpector making ſuch ſurcharge, ſhall have one moiety of the ſum charged. *ſ.* 5. 7.

Provided, that nothing herein ſhall extend to charge any *horſe let to hire for travelling poſt*, by any poſtmaſter, innkeeper, or other perſon, licenſed for that purpoſe by the officers of the ſtamp duties. *ſ.* 9. Horſes exempted. Thoſe let for hire for travelling poſt.

Nor to any horſe ſolely employed or uſed for drawing any *ſtage coach* or *diligence* by any perſon duly licenſed to keep ſuch carriages: Nor to any *mule* which hath not been uſed. 38 *G.* 3. *c.* 41. *Schedule* D. Horſes drawing ſtage coaches, &c and mules never uſed.

Provided alſo, that nothing herein ſhall extend to any horſe under the *height of* 13 *hands*, of 4 inches to a hand. 36 *G.* 3. *c.* 15. *ſ.* 10. Horſes under 13 hands.

Nor to any horſe which ſhall not at any time whatever preceding the time of making the aſſeſſment for that year have been ridden, or uſed as a draught horſe, or for carrying any burthen, and of which an account ſhall be given at the time of the delivery of ſuch liſt as aforeſaid. *Id.* Horſes that have not been uſed.

Provided always, that no perſon who ſhall ſerve in any volunteer corps, and ſhall provide a horſe liable to the duties aforeſaid, for ſuch ſervice; or who ſhall at his expence furniſh any ſuch horſe for any perſon ſerving in any ſuch corps, ſhall be chargeable for ſuch horſe to any of the duties aforeſaid. 37 *G.* 3. *c.* 106. *ſ.* 2. Horſes furniſhed for volunteer corps.

And moreover if any perſon liable to deliver ſuch liſt as aforeſaid, ſhall refuſe or neglect within the time preſcribed, to deliver, or cauſe to be delivered, ſuch liſt to ſuch aſſeſſor, he ſhall forfeit 10*l.* to be recovered in the courts at *Weſtminſter*, half to the king, and half with full coſts to him who ſhall ſue. 36 *G.* 3. *c.* 15. *ſ.* 6. Penalty on not delivering liſts.

And all duties by this act impoſed, are to be aſſeſſed, managed, collected, paid, and recovered, under ſuch penalties, forfeitures, and diſabilities, and according to ſuch general rules, methods, and directions as the duties on horſes kept for the purpoſe of riding, except where expreſsly varied by this act; and all powers, authorities, rules, directions, penalties, forfeitures, clauſes, matters, and things contained in any act relating to the ſaid duties on horſes uſed for riding, now in force, and not hereby otherwiſe provided for, nor repugnant to the directions of this act, ſhall be in as full force as if the ſame had been re-enacted in the body of this act. *ſ.* 8. Duties to be aſcertained, &c. as former duties on riding horſes.

[*N. B.* See the regulations made by 38 *G.* 3. *c.* 41. *ante* under this head.]

VIII. Horſe

VIII. Horſe dealers to be licenſed.

Former duties repealed.

By 36 *G.* 3. *c.* 17. the duties on licences granted to horſe dealers, are repealed, and the following duties impoſed in lieu thereof. *ſ.* 1.

New licence duty.

Every perſon uſing and exerciſing the trade or buſineſs of a *horſe dealer*, may (in order to be exempted from the duty on horſes) take out a licence from the ſtamp officers, for which he ſhall pay (if within the bills 20*l.*) elſewhere 10*l.* which licence, if taken out for the year in which the ſame ſhall be iſſued, ſhall be in force until and upon the 29th of *September* then next following, and ſhall commence from the date thereof; and if taken out for any year ſubſequent to the year in which the ſame ſhall be iſſued, ſhall commence from 29th *Sept.* then next following, and continue for one year as aforeſaid. *ſ.* 2. 4.

To be renewed annually.

And the ſame ſhall be renewed annually ten days at leaſt before the end of the year. *ſ.* 4.

Partners.

But perſons in partnerſhip need only take out one licence for one houſe. But the ſame ſhall not authorize any perſon to keep any horſe for ſale in any other place than that which ſhall be mentioned in ſuch licence. *ſ.* 5.

Licence reſtrained to the place.

Certain words to be put up.

And every ſuch licenſed horſe dealer ſhall cauſe the words *licenſed to deal in horſes* to be put up in large legible characters, either on a ſign hung out, or on ſome viſible place in the front of his houſe, gateway, or ſtable; on pain of forfeiting 10*l.* to be recovered in the courts at *Weſtminſter*, half to the king, and half to him who ſhall ſue. *ſ.* 6.

Perſons dealing in horſes without a licence, liable to the duties on riding horſes.

And every perſon uſing the trade of a horſe dealer without having ſuch licence as aforeſaid, ſhall be liable to the duties on horſes uſed for riding; and ſhall be chargeable for the greateſt number kept by him within the year for which a liſt is directed to be returned in purſuance of the ſaid acts; and ſhall be liable to all the rules, regulations, and penalties thereby impoſed. *ſ.* 7.

Powers of 29 *G.* 3. to extend to this act.

And all powers, rules, directions, and proviſions contained in the ſaid act of 29 *G.* 3. *c.* 49. ſhall be in force in the execution of this act, as fully as if the ſame had been repeated and re-enacted herein. *ſ.* 8. (*a*)

Limitation of actions.

And no action ſhall be brought for any thing done in purſuance of this act, unleſs commenced within ſix months.

(*a*) For which ſee title Coaches, &c.

And

And the defendant may plead the general iſſue, and if the jury find for him he ſhall have treble coſts. *ſ.* 10.

A. Warrant to apprehend a horſe ſtealer.

Weſtmorland. To the conſtable of ———

FORASMUCH as A. I. *of* ——— *in the county of* ——— *yeoman, hath this day made information and complaint upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that yeſterday in the night a black mare, the property of him the ſaid* A. I. *was felonioúſly ſtolen, taken, and carried away from and out of the grounds of him the ſaid* A. I. *at* ——— *aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that* A. O. *late of* ——— *labourer, did felonioúſly ſteal, take, and carry away the ſaid mare: Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and bring him before me to anſwer to the ſaid information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and ſeal the* ——— *day of* ——— *in the year of our Lord* ———

Or if the offence amounts to burglary, then the warrant may be thus:

B. Weſtmorland. To the conſtable of ———

FORASMUCH as A. I. *of* ——— *in the county of* ——— *yeoman, hath this day made information and complaint upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that yeſterday in the night the ſtable of him the ſaid* A. I. *adjoining to the dwelling houſe of him the ſaid* A. I. *at* ——— *aforeſaid, was felonioúſly and burglarioúſly broken open, and one black mare, the property of him the ſaid* A. I. *felonioúſly and burglarioúſly ſtolen, taken, and carried away from thence; and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that* A. O. *late of* ——— *in the county aforeſaid, labourer, the ſaid felony and burglary did commit: Theſe are therefore to command you forthwith to apprehend him the ſaid* A O. *and bring him before me to anſwer to the ſaid information and complaint and to be further dealt with according to law. Herein fail you not.*

not. Given under my hand and ſeal the ——— *day of* ——— *in the year of our Lord* ———

C.

A. B. *is convicted on the oath of* A. W. *inſpector of houſes and places for ſlaughtering horſes, for the pariſh of* ——— *in the county of* ——— *of refuſing to pay the ſum of* ——— *being the expence of an advertiſement inſerted in the* Daily Advertiſer, *or ſome other public news-paper circulated in the county* (as the caſe may be) *purſuant to the directions of the ſtatute in that caſe made and provided. Given, &c.*

D.

BE *it remembered, that on this* ——— *day of* ——— *in the year* ——— A. O. *licenſed for ſlaughtering horſes, is convicted, upon the oaths of* A. W. *and* B. W. *two credible witneſſes before me* J. P. *one of his majeſty's juſtices of the peace for the county of* ——— *of having wilfully made,* (or *cauſed to be made*) *a falſe entry in the book required by the ſtatute in that caſe made and provided, to be kept by the ſaid* A. O. *whereby he has forfeited the ſum of* ———. *Given, &c.*

E.

BE *it remembered, that on this* ——— *day of* ——— A. O. *was convicted upon the oaths of two credible witneſſes, before me* J. P. *one of his majeſty's juſtices of the peace for the county of* ———, *for occaſionally lending a houſe* (or *place*) *for the purpoſe of ſlaughtering horſes* or *cattle for other purpoſes than for butchers' meat, without a licence for that purpoſe firſt obtained, according to the ſtatute in that caſe made and provided. Given, &c.*

Horſe races.

No perſon to enter a horſe unleſs it be his own property.

BY the 13 G. 2. *c.* 19. Whereas the great number of horſe races for ſmall plates or prizes have contributed very much to the encouragement of idleneſs, and impoveriſhment

poveriſhment of many of the meaner ſort of people, and the breed of ſtrong and uſeful horſes hath been much prejudiced thereby; it is enacted, that no perſon ſhall enter, ſtart, or run any horſe, (mare or gelding,) for any prize, unleſs the ſame ſhall be *bonâ fide* his own property; on pain of forfeiting the ſame, or the value thereof.

Nor to enter more than one horſe for the ſame prize.

Nor ſhall any one perſon enter and ſtart more than one horſe for one and the ſame prize; on pain that every ſuch horſe (other than that which was firſt entered) ſhall be forfeited, or the value thereof.

Entrance money.

And all ſums of money paid for entrance, ſhall go to the ſecond beſt horſe.

No prize to be leſs than 50l.

And no plate, prize, ſum of money, or other thing, ſhall be run for, or adverti ſed or proclaimed to be run for, unleſs ſuch plate, prize, or ſum of money, be of the real and intrinſic value of 50l. or upwards: And if any perſon ſhall enter, ſtart, or run any horſe for any ſuch plate, prize, or ſum of money, under the value of 50l. or ſhall make, print, advertiſe, or publiſh any advertiſement of any ſuch prize under the value of 50l. every ſuch perſon ſo entering, ſtarting, or running ſuch horſe, ſhall forfeit 200l. and every maker, printer, or publiſher of ſuch advertiſement, ſhall forfeit 100l.

No match to be for leſs than 50l.

And no perſon ſhall ſtart or run any match for any ſum of money or other thing, unleſs it be at *Newmarket* or *Black Hambleton*, or unleſs ſuch ſum or other thing be of the real and intrinſic value of 50l. or upwards; on pain of 200l.

A wager on a horſe race under 50l.

In the caſe of *Johnſon* v. *Bann*, *M.* 31 *G.* 3. An action was brought to recover a wager of 5l. on the event of a horſe race; which was tried at the *Cheſter* aſſizes; when it appearing that the bet had been made on a horſe race for a ſmaller ſum than 50l. it was objected by the defendant's counſel that, as the ſubject of the wager was illegal, the wager itſelf was bad in law; and the plaintiff was nonſuited.—*Leyceſter* moved to ſet aſide the nonſuit, contending, that as it was now determined in *Good* v. *Elliott*, that wages in general were legal, unleſs in particular caſes, ſuch as tend to a breach of the peace, or to immorality, or affect the intereſt or feelings of a third perſon, or expoſe him to ridicule, or libel him, or unleſs it be againſt ſound policy; that this wager is not void on any of theſe grounds.—But by the *court*, it it ſufficient without adverting to caſes, to ſay, that the horſe race itſelf is prohibited by 13 *G.* 2. *c.* 19. *ſ.* 2. and as the race which is

the ſubject of the wager is illegal, ſo alſo is the wager. Rule refuſed. *Durnf.* & *Eaſt*, 4 V. 1.

A match for 25l. a ſide, is a match for 50l.

In the caſe of *Bidmead* and *Gale*, *E.* 9 *G.* 3. An action of covenant was brought upon articles to run a horſe match. The agreement was, that each ſhould ſtart his mare; and that if either ſhould refuſe or neglect, he ſhould forfeit and pay 25l. to the other. So that it was a match for 25l. each ſide play or pay: But the plaintiff was to pay the defendant 5l. before-hand, as a conſideration to induce him to make the match. The defendant afterwards refuſed to run the match. Whereupon the plaintiff brought this action againſt him, for the 25l. and aſſigned the breach of covenant, in the defendant's not ſtarting his mare. The cauſe was tried before Mr. Baron *Perrot*, who conſidered it as a match for 50l. and directed a verdict for the plaintiff, with liberty to move in arreſt of judgment.——A motion in arreſt of judgment was accordingly made. And after ſome ſmall altercation whether this were within the ſtatutes of gaming, the matter was reduced to this ſingle queſtion, Whether this was a match for 50l. or for leſs than 50l.? If it was for leſs than 50l. it is prohibited by the ſtatute of 13 *G.* 2. *c.* 19. which enacts, that no match, unleſs at *Newmarket* or *Black Hambleton*, ſhall be run for any ſum of money or other thing of leſs value than 50l.——For the defendant it was urged, that this was only a match for 25l, as neither party could loſe more than that ſum; or, at the utmoſt, a match for 45l. as the total of both ſums riſked did amount to no more; for there was no riſk remaining upon the 5l. which the defendant had received from the plaintiff, and had ſafe in his purſe, without poſſibility of loſing it upon this match.——The plaintiff's counſel argued, that the ſum run for was moſt manifeſtly 50l. and that the advancing 5l. certain made no ſort of difference.—The court, as it turned upon the conſtruction of a general act of parliament, took a few days to conſider. After which L. *Mansfield* declared that they were all of opinion, that this was a match for 50l. though the ſtakes were unequal, of which the plaintiff contributed 30l. and the defendant 20l. that is, they ſtaked after the proportion of three to two. *Burr. Mansf.* 2432.

The aforeſaid penalties to be recovered in the courts at *Weſtminſter*, or at the aſſizes, and be diſpoſed of, half to him that ſhall ſue, and half to the poor of the pariſh where the offence ſhall be committed.

And

And by 24 *G.* 3. *c.* 31. For every horſe entered to ſtart or run for a plate, prize, ſum of money, or other thing, ſhall be paid a duty of 2l. 2s. over and above all other duties. *ſ.* 1. Duty for race horſes.

And the owner of every horſe entered as aforeſaid, ſhall previouſly pay to the clerk of the courſe, or other perſon authoriſed to make ſuch entry, the ſum of 2l. 2s. as the duty for one year: Which if he neglect or refuſe to do, he ſhall forfeit 20l. *ſ.* 5. 2l. 2s. to be paid for one year.

And the clerk of the courſe, or other perſon who ſhall receive ſuch entrance money, ſhall within 14 days after the receipt thereof give an account of, and pay the ſame, to the diſtributor of the ſtamps, on pain of 100l. for not delivering ſuch account, and double the money due at the time of ſuch default. And the diſtributor ſhall make him an allowance of 1s. in the pound for all monies accounted for and paid by him. *ſ.* 6, 7. Duty of the clerk of the courſe.

All penalties and forfeitures on this act may be recovered before any neighbouring juſtice, by diſtreſs, half to the king, and half to him that ſhall ſue; and for want of ſufficient diſtreſs, the offender to be committed to priſon for three months, unleſs the penalty be ſooner paid. *ſ.* 19, 20. Penalties how to be recovered.

Perſons aggrieved may appeal to the next ſeſſions, (giving ſecurity to the amount of the penalty and coſts,) whoſe determination ſhall be final, and they may award coſts as to them ſhall ſeem meet. *Id.* Appeal.

Penalties may be mitigated, not exceeding one moiety thereof, and coſts. *ſ.* 21. Mitigation.

Betting, loſing, winning, cheating, and the like, at horſe races, are within the ſtatutes of Gaming; for which ſee the title Gaming.

Houſe.

I. Houſe, how far protected by law.
II. Duty on houſes in general, and on windows or lights therein.
III. Duty on houſes worth 5l. a year and upwards.

I. Houſe, how far protected by law.

A Man's home or habitation is ſo far protected by the law, that if any perſon attempts to break open a

house in the night time and shall be killed in such attempt, the slayer shall be acquitted and discharged. And so tender is the law in respect of the immunity of a man's house, that it will never suffer it to be violated with impunity. Hence in part arises the animadversion of the law upon eaves-droppers, nusances, and incendiaries: and to this principle it must be assigned, that a man may assemble people together lawfully (at least if they do not exceed eleven) without danger of raising a riot, rout, or unlawful assembly, in order to protect and defend his house, which he is not permitted to do in any other case. 4 *Black.* 223.

Burglary and felony.

In the case of burglary, which is breaking and entring a dwelling house in the night time with intent to commit felony, it is a capital offence, although no felony be actually committed. And where the offence falls short of burglary, it is by several particular statutes made felony without benefit of clergy, to rob any dwelling house in the day time, any person being therein; or stealing in the day time to the value of 5s. in any dwelling house or out-house thereunto belonging, although no person be therein; or stealing to the value of 40s. in any such dwelling house or out-house, although the same be not broken open; or breaking a house in the day time, any person being therein and put in fear, although nothing be stolen; or privately stealing any goods to the value of 5s. in any shop, warehouse, or stable, although it be not broken open, nor any person be therein. And a reward of 40l. is given to any person who shall apprehend and prosecute to conviction any person guilty of the felonious breaking and entring of a dwelling house either by day or night. 3 *W.* *c.* 9. 39 *El.* *c.* 15. 12 *An.* *st.* 1. *c.* 7. 5 *Ed.* 6. *c.* 12. 10 & 11 *W.* *c.* 23. 5 *An.* *c.* 31.

Breaking open doors to apprehend offenders.

Concerning the breaking open the doors of an house, in order to apprehend offenders, it is to be observed, that the law never allows of such extremities, but in cases of necessity; and therefore that no one can justify the breaking open another's door to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *Haw.* 86.

But where a person, authorised to arrest another who is sheltered in an house, is denied quietly to enter into it, in order to take him; it seems generally to be agreed, that he may justify breaking open the doors in any case where the king is party, as upon a warrant from a justice of the peace to find sureties for the peace or good behaviour, or

for

for the levying of a forfeiture upon a penal ſtatute, which gives the whole or any part of ſuch forfeiture to the king. 2 *Haw.* 86.

In a civil ſuit; an officer cannot juſtify the breaking open an outward door or window in order to execute proceſs. If he doth, he is a treſpaſſer. But if he finds the outward door open, and enters that way, or if the door be opened to him from within, and he enters, he may break open inward doors if he find that neceſſary, in order to execute his proceſs. *Foſt.* 319.

For a man's houſe is his caſtle, for ſafety and repoſe to himſelf and family; but if a ſtranger, who is not of the family, upon a purſuit taketh refuge in the houſe of another, this rule doth not extend to *him*, it is not *his* caſtle, he cannot claim the benefit of ſanctuary therein. *Id.* 320.

II. *Duty on houſes in general, and on windows or lights therein.*

i. Firſt meeting of the commiſſioners, for the iſſuing precepts to return aſſeſſors.
ii. Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.
iii. Third meeting; ſigning the aſſeſſment, with warrant to collect.
iv. Fourth meeting; the appeal.
v. Collecting.
vi. Collector paying to the receiver.
vii. Receiver paying into the exchequer.
viii. Duplicates to be tranſmitted into the exchequer.
ix. General penalty on officers not doing their duty.

i. Firſt meeting of the commiſſioners, for the iſſuing precepts to return aſſeſſors.

Commiſſioners of the land tax ſhall be commiſſioners for the duties on houſes and windows. 20 *G.* 2. *c.* 3. *ſ.* 6. 38 *G.* 3. *c.* 40. *ſ.* 15. Commiſſioners to theſe duties.

And where two commiſſioners ſhall not attend at any meeting within the time limited by law, one commiſſioner, together with one juſtice for ſuch county or place, or if no commiſſioner ſhall attend, two juſtices may do all acts, Where 2 commiſſioners do not attend juſtices may act.

matters, and things which are directed to be done by two commiſſioners; and all ſuch juſtices being duly warned of ſuch default by any inſpector, ſurveyor, collector or aſſeſſor of the ſaid duties, ſhall, in a convenient time, aſſemble at the uſual place of holding ſuch meetings, and all things done by them ſhall be as valid and effectual as if done by two commiſſioners. 38 *G.* 3. *c.* 40. *ſ.* 19.

Qualification. But no commiſſioner of the land tax ſhall act as commiſſioner of theſe duties, unleſs duly qualified (that is, unleſs he be taxed at 100l. a-year in the county or diviſion, except certain counties in *Wales*, as by the land tax acts); on pain of 20l. to be levied as other penalties by this act. 21 *G.* 2. *c.* 10. *ſ.* 3.

Oaths. And by 38 *G.* 3. *c.* 40. every commiſſioner, or juſtice acting as a commiſſioner, before he act, ſhall take the following oath:

I A. B. *do ſwear, that I will truly, faithfully, impartially, and honeſtly, according to the beſt of my ſkill and knowledge, execute the ſeveral powers and authorities repoſed in me as a commiſſioner, by the ſeveral acts relative to the duties under the management of the commiſſioners for the affairs of taxes; and that I will judge and determine upon all appeals, and all other matters and things which ſhall be brought before me as a commiſſioner under the ſaid ſeveral acts, and every or any of them, without favour or affection. So help me God.*

Which oath, any one commiſſioner or juſtice may adminiſter, (although he hath not himſelf previouſly taken ſuch oath,) and which oath ſo taken ſhall be ſubſcribed by the party taking the ſame, and the names of thoſe perſons ſhall, within one month afterwards, be tranſmitted to the tax office by the clerk; and if any perſon ſhall act after 5th *April* 1798 without taking the ſaid oath, (except in adminiſtering the ſame,) he ſhall forfeit 50l. for every ſuch offence. *ſ.* 24.

But they ſhall not be obliged to take the oaths, and ſubſcribe the declaration, and receive the ſacrament, as directed by the 25 *C.* 2. *c.* 2. as other perſons qualifying for offices; but only to take the oaths of allegiance, ſupremacy, and abjuration, or, if quakers, affirm their ſubſtance, as by the land tax acts. 20 *G.* 2. *c.* 3. *ſ.* 27. 38 *G.* 3. *c.* 40. *ſ.* 25.

Time and place of meeting. Which ſaid commiſſioners ſhall meet yearly, at the moſt uſual place of meeting, at ſuch time as ſhall be appointed for the firſt general meeting of the commiſſioners of the land

land tax, or on such other day as they shall think proper, before *April* 30, yearly. 20 *G.* 2. *c.* 3. *s.* 6.

Subdividing.

And at such first meeting, they may agree to subdivide themselves, and the other commissioners not then present, in such manner as to them shall meet. *Id. s.* 6.

Precept to return assessors.

Also at such first meeting, they, or the major part of them then present, shall direct their several or joint precepts (A) to such inhabitants, and such number of them as they shall think most convenient, to be presentors and assessors, requiring them to appear before the said commissioners, at such time and place as they shall appoint; not exceeding ten days. *Id. s.* 6.

Assessors appointed under former acts to put this act in execution.

And the several surveyors and inspectors, assessors and collectors appointed, or hereafter to be appointed to put in execution the acts relative to the duties hereby repealed, may put this act in execution, in the like, and in as full and ample manner as they are authorized to put those acts in execution. 38 *G.* 3. *c.* 40. *s.* 15.

Assessors in towns corporate.

But no person in a city, borough, or town corporate, shall be compelled to be an assessor or collector out of the limits thereof. 20 *G.* 2. *c.* 3. *s.* 18.

Where neglect hath been made in appointing assessors or collectors, 2 justices to appoint.

And if in any parish or place, failure shall happen in appointment of assessors to take upon them the execution of this act, on or before the 30th of *April* in any year; or in the appointment of collectors to take upon them the execution of this act, on or before the 30th *May* in any year, two justices on notice of such default from the surveyor or inspector, are required to appoint assessors and collectors as the case may require, and may issue their precepts to so many of the inhabitants of such parish or place as they may think necessary, to appear before them for the purpose of taking upon them such respective offices; and if any person shall neglect to appear according to such precept, or being appointed either by the commissioners or the said justices, shall wilfully neglect or refuse to perform his duty, or to take the oath by this act required; every such person so offending shall forfeit 20 l. 38 *G.* 3. *c.* 40. *s.* 18.

Collectors to return their last collection bills.

And the last collectors shall cause a copy of the assessments given to them, and of the collection made by them, to be fairly written and signed by them, but with such alterations therein as shall be necessary, by reason of any new houses erected, or the number of windows in any house increased, or by reason of the change of inhabitants or occupiers of any house, or otherwise, or a true duplicate thereof, signed as aforesaid, to be delivered to three

or more commiſſioners yearly, within ten days after the firſt meeting. 20 *G.* 2. *c.* 3. *ſ.* 8.

So that it may be moſt proper to direct the precept for the laſt collectors to be aſſeſſors.

Aſſeſſors to take the oaths.

And every aſſeſſor, before he acts, ſhall take the oaths required by the 1 *W.* *c.* 18. before three commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 6. 38 *G.* 3. *c.* 40. *ſ.* 25.

Which oaths are the oaths of allegiance and ſupremacy.

But quakers, inſtead of ſuch oaths, ſhall be allowed to make and ſubſcribe the declaration of fidelity, preſcribed by the ſaid act of the 1 *W.* *c.* 18. 20 *G.* 2. *c.* 42. *ſ.* 4.

Aſſeſſors refuſing.

Aſſeſſors refuſing to take the oaths, or their offices, ſhall forfeit 20 l. 38 *G.* 3. *c.* 40. *ſ.* 18.

ii. Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.

Charges to the aſſeſſors.

The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates and duties, and openly declare the effect of their charge unto them, and how they ought to make their aſſeſſments. 20 *G.* 2. *c.* 3. *ſ.* 6.

Oath to be taken.

And every ſuch aſſeſſor ſhall, before he preſumes to act, alſo take the following oath, to be adminiſtered by two commiſſioners: *I* A. B. *do ſwear* [or *affirm*] *that in the aſſeſſment which I am required to make by authority of the ſeveral acts relative to the duties under the management of the commiſſioners for the affairs of taxes, and now in force, I will act faithfully and honeſtly, and without favour or affection, according to the beſt of my ſkill and knowledge.*

So help me God.

On penalty of 50 l.

And if any perſon ſo appointed aſſeſſor ſhall preſume to act before he ſhall have taken ſuch oath, or affirmation, he ſhall forfeit 50 l. 38 *G.* 3. *c.* 40. *ſ.* 26.

Former duties repealed.

And after 5th *April* 1798 all the duties upon houſes, windows, or lights, and the additional duties on the amount thereof, are repealed; and the following duties impoſed in lieu thereof:

New duty.

	£.	s.	d.
For not more than 6 windows or lights (except ſuch inhabited dwelling-houſes worth 5 l. a-year, and charged to the duty hereinafter-mentioned according to the rent thereof) - - -	0	4	6
If of the value of 5 l. a-year, and charged to the ſaid duty accordingly	0	6	0

For

				£.	s.	d.
For	7 windows or lights and no more			0	14	6
—	8 ditto	-	-	1	1	0
—	9 ditto	-	-	1	7	0
—	10 ditto	-	-	1	14	0
—	11 ditto	-	-	2	4	0
—	12 ditto	-	-	2	16	0
—	13 ditto	-	-	3	8	0
—	14 ditto	-	-	4	0	0
—	15 ditto	-	-	4	12	0
—	16 ditto	-	-	5	4	0
—	17 ditto	-	-	5	16	0
—	18 ditto	-	-	6	8	0
—	19 ditto	-	-	7	0	0
—	20 ditto	-	-	7	12	0
—	21 ditto	-	-	8	4	0
—	22 ditto	-	-	8	16	0
—	23 ditto	-	-	9	8	0
—	24 ditto	-	-	10	0	0
—	25 ditto	-	-	10	12	0
—	26 ditto	-	-	11	2	0
—	27 ditto	-	-	11	12	0
—	28 ditto	-	-	12	2	0
—	29 ditto	-	-	12	12	0
—	30 ditto	-	-	13	2	0
—	31 ditto	-	-	13	12	0
—	32 ditto	-	-	14	2	0
—	33 ditto	-	-	14	12	0
—	34 ditto	-	-	15	2	0
—	35 ditto	-	-	15	12	0
—	36 ditto	-	-	16	0	0
—	37 ditto	-	-	16	8	0
—	38 ditto	-	-	16	16	0
—	39 ditto	-	-	17	4	0
—	40 and not more than	44	-	17	10	0
—	45 ditto	- 49	-	19	0	0
—	50 ditto	- 54	-	20	10	0
—	55 ditto	- 59	-	22	0	0
—	60 ditto	- 64	-	23	10	0
—	65 ditto	- 69	-	25	0	0
—	70 ditto	- 74	-	26	10	0
—	75 ditto	- 79	-	28	0	0
—	80 ditto	- 84	-	29	10	0
—	85 ditto	- 89	-	31	0	0
—	90 ditto	- 94	-	32	10	0
—	95 ditto	- 99	-	34	0	0

— 100

	£.	s.	d.
—— 100 ditto not more than 109 -	37	0	0
—— 110 ditto - 119 -	40	0	0
—— 120 ditto - 129 -	43	0	0
—— 130 ditto - 139 -	46	0	0
—— 140 ditto - 149 -	49	0	0
—— 150 ditto - 159 -	52	0	0
—— 160 ditto - 169 -	55	0	0
—— 170 ditto - 179 -	58	0	0
—— 180 or upwards - -	61	0	0
If more than 180 for every window exceeding 180 - -	0	2	6

Which ſaid duties ſhall be charged in reſpect of every inhabited dwelling-houſe, without any other or further exemption being allowed than ſuch as are contained and expreſsly provided in and by this act, notwithſtanding any former ſtatute to the contrary. 38 *G.* 3. *c.* 40. *ſ.* 1, 2. *Sched.* A.

Two diſtinct houſes with an inward communication.

Every dwelling-houſe] Caſe of Mrs. *Torkington*, *Deptford*, *Aug.* 23, 1750. Mrs. *Torkington* held *two* houſes, which adjoined cloſe to each other, and had ſeparate and diſtinct ſtaircaſes, and alſo different avenues from the ſtreet to the houſe, and ſhe was charged by the aſſeſſors for them as two ſeparate houſes. But the ſurveyor finding that there was a communication between the two houſes by a door-way on the ground floor, which was conſtantly made uſe of, ſurcharged her as for one entire tenement. Upon which ſhe appealed to the commiſſioners, who determined that ſhe was not liable to be charged for one entire houſe. But on a ſpecial ſtate of the caſe for the opinion of the judges, *Lee* Ch. J. and nine other of the judes declared their opinion that the determination of the commiſſioners was wrong *.

Caſe of Mr. *Robſon*, *Jan.* 1772. Mr. *Robſon* was in poſſeſſion of a houſe, which adjoins to another houſe under the ſame roof, both belonging to the ſame landlord, into which two houſes there is but one entrance from the ſtreet along a paſſage, about the middle of which there is a door on each ſide, one into his own houſe, and the

* This and the other caſes following under this title are taken from a printed account of caſes ſent to the ſeveral ſurveyors, as determined by the judges on references to them for their opinion.

other

other for the occupier of the other house; the occupier of each house hath a shop to the street which communicates with his own house only, with each a door to the street. These houses have separate staircases and yards, and have no communication between them, save only the said passage. The said houses have been charged to the land tax and poor rate as two separate tenements, but the same has always been charged to the window tax to Mr. *Robson*, as one entire tenement, to which charge he appealed; and the commissioners determined that these houses should be charged as two separate houses. And the judges were of opinion that the determination of the commissioners was right.

Dwelling-house inhabited] Case of *William Tullie* esquire in the north riding of *Yorkshire*, 27 *Jan.* 1764. It appeared that the house was not inhabited, but was furnished; and a woman who lived in the town in a house of her own, went frequently to open the windows to air the house, and to take care of it, for which she had a yearly stipend; but as she did not lodge in the house, nor make fires, the commissioners determined that the house was not liable to be charged. But the judges were of opinion that the determination of the commissioners was wrong.

What shall be deemed *inhabiting* a house.

Case of *Benjamin Broomhead* esquire in the county of *Lincoln*, 16 *July* 1767. The house was certified by the assessors as empty. It appeared that the only use the owner made of it was now and then to drink a glass of wine in it when he comes there; that he had four times last summer dined there with his family; but that he never lodges in the said house; that a person who rents part of one of the offices belonging to the said house has the care thereof, and occasionally sets open the windows to air the rooms. It was determined by the commissioners that the house was not liable; but the judges were of opinion that the determination of the commissioners was wrong.

Case of Sir *William Trelawney*, 3 *July* 1775. He had a house in *Pelyns* in the county of *Cornwall*. He and his family were then at *Jamaica*, and the house was not inhabited; but once a-year Sir *William*'s steward, who lived at the distance of twenty miles from the said house, came there to receive the rents of his estates, and laid there for two or three nights. The keeping and looking after the house was committed to the care of a woman, who occasionally aired the same, but did not lodge there,

and

and lived at a quarter of a mile's distance therefrom, in her own house. The commissioners determined that the said house ought not to be charged; but the judges were of opinion that their determination was wrong.

Case of *James Durno* of *Kensington*, 3 *July* 1775. On appeal against the surveyor's surcharge for one half year, during which time the appellant insisted that the house was not inhabited, it appeared that the said house was during all the said space of time furnished; and that a bill was affixed on the door, purporting that the house was to be let ready furnished; that Mr. *Durno*'s servant, or agents, frequently went to the house, and opened the windows thereof, and shewed the same to people who applied to take the house; but that no servant or agent of Mr. *Durno*'s, or any other person, during all the time aforesaid, either lodged in, or occupied the said house. Whereupon the commissioners, apprehending that the house ought to be considered as unoccupied, discharged the same from the duties for the time aforesaid. And the judges were of opinion that the determination of the commissioners was right.

G. Smedley appealed against a surcharge for 48 windows in a house belonging to *Earl Powis*. This house is used sometimes as a magazine to keep such stores as are requisite to work a mine hard by; Mr. *Smedley* made oath that he is a hired servant to take care of those stores; this house has hitherto paid no rate to church or poor, but that there are several lodging-rooms in it, and that Mr. *Smedley* and his family use and air them occasionally. The commissioners thought this house ought to be charged, and the judges were of the same opinion.

Unto what windows the duty shall extend.

And every *kitchen*, *scullery*, *buttery*, *pantry*, *larder*, *wash-house*, *laundry*, *bake-house*, *brew-house*, and *lodging-room*, belonging to or occupied with any dwelling-house, whether joined to it or not, shall be deemed part thereof, and the windows thereof charged accordingly. 21 *G.* 2. *c.* 10. *s.* 1.

Wash-house, laundry, bake-house.

Wash-house, *laundry*, *bake house*.] *E. Utting* of *Beeles*, baker, appealed against a surcharge of four windows in his *wash-house*, and three in his *bake-house*, both of which are disjoined and separate from his dwelling-house.

T. Osborne, of the same town, appealed against one window in his *wash-house*, which joins with his dwelling-house, but has no inward communication therewith.

A. Schuldham of the same, appealed against a surcharge of one window in his *wash-house* disjoined from his dwelling-

ing-

ing-houſe, and three in the laundry which is over the ſaid waſh-houſe, and is alſo disjoined from the ſaid dwelling-houſe. The commiſſioners allowed their ſeveral appeals; but the judges were of opinion they were wrong.

Shops, warehouſes, and compting-houſes.

Mr. *Duke* was ſurcharged for ſix windows, two in his *ſhop*, two in his *warehouſe*, and one in his *compting-houſe*, and one *garret* window uſed for laying lumber and boxes in his trade. The commiſſioners thought he ought not to be charged for thoſe windows, as ſhops, warehouſes, and compting-houſes were not enumerated in the act, tho' places of leſs conſequence, ſuch as waſh-houſe, pantry, &c. are; but the judges were of opinion their determination was wrong.

Mr. *Goſtwick*, ſhopkeeper, occupied buildings, part of which he uſed as a dwelling-houſe, and the other part for trade, and becauſe there is a door that leads to the *ſhop* from the paſſage which divides the dwelling-houſe from the *ſhop* and *ware-rooms*, the ſurveyor ſurcharged the ſame. The commiſſioners were of opinion that the ſaid ſhop and ware-rooms were no part of the dwelling-houſe, as there was no lodging-rooms, or any other room therein appropriated to family buſineſs, but for trade only; and there being no internal communication whatever between the ſaid houſes but in the paſſage, and there is an external paſſage into the ſhop from the ſtreet, diſcharged the ſame; but the judges were of opinion they were wrong.

Mr. *Porten* being charged for 45 windows in his *warehouſe*, appealed, alleging that his warehouſe is a diſtinct building, one ſtory lower than his dwelling-houſe, but adjoins to the ſame; that there is a communication by a door-way from his compting-houſe being part of the ſaid dwelling-houſe, into the ſaid warehouſe, but no perſon ever lodged in the ſaid warehouſe. The commiſſioners thought that he ought not to pay for the ſaid 45 windows; but the judges determined they were wrong.

Mr. *Riley*, cabinet-maker, appealed againſt an aſſeſſment made upon him for two houſes adjoining laid into one, as *work-ſhops* and *warehouſes*, and repoſitory for furniture in *Long-Acre*. He alleged that no perſon ſleeps in or inhabits the ſaid warehouſes otherwiſe than during the hours of buſineſs: the appellant ſeven years ago took down all the partitions on every floor, cut off the water, ſtopped up the chimneys, and converted the whole into two ranges of warehouſes, and erected ſtages on the top of the houſe for drying mahogany, beating feathers, &c. It appeared, that on the ground-floor in each houſe is a diſtinct office

or compting-houſe, made uſe of by himſelf and clerks for tranſacting buſineſs with his cuſtomers. The commiſſioners diſmiſſed the appeal; and the judges determined they were right.

Mr. *Porter*, ſkinner at *York*, is the occupier of ſeveral houſes there; he and his family lodge in the dwelling-houſe, but do not uſe any part thereof for depoſiting goods therein or any other purpoſe of trade, the buildings in queſtion being uſed only for that purpoſe: he was ſurcharged 60 windows in his *warehouſes* hereafter deſcribed, to which he appealed, when it appeared, that the buildings ſurcharged are uſed as *drying-houſes* and *ware-houſes* for ſkins and wool; that for that purpoſe it was neceſſary to have many large holes to admit air, which are occaſionally opened and ſhut by wood doors, and when open admits light, but had no glaſs; one of the buildings adjoins to Mr. *Porter*'s houſe, but has no communication therewith, and the road to it is through a paſſage from the ſtreet; that the other building is 200 yards off, and is uſed for trade exactly in the ſame manner. The commiſſioners relieved Mr. *Porter*, and the judges thought they were right.

Wool-rooms. *S. Norman*, clothier, occupied a building of three ſtories covered with one roof, the ground-floor and chambers are uſed for habitation, the upper ſtory is uſed as a ſtore-room for *wool* and other materials for carrying on the *woollen manufacture*, in which are three windows, but thoſe rooms have no communication with the dwelling-houſe, but hath a diſtinct ſtaircaſe on the outſide. Mr. *Norman* appealed, and the commiſſioners thinking the three windows in ſuch ware-rooms as aforeſaid not liable, relieved Mr. *Norman*; but the judges thought their determination was wrong.

Mrs. *Cowell* of *Leeds* occupied a building of three ſtories, the upper ſtory whereof was let off to a wool-ſtapler who lived at ſome diſtance, and was uſed by him as a *wool-warehouſe*, and not as a dwelling-houſe, in which are ſix windows: there is no communication with the dwelling-houſe, but there is a diſtinct ſtaircaſe on the outſide into the yard. Mrs. *Cowell* appealed to the commiſſioners, who thought her not liable, as ſhe was not the occupier; but the judges determined they were wrong.

But in the caſe of *S. Brewin* woolſtapler at *Leiceſter*, who was charged for his windows in the *warehouſe* where he *ſorted his wool*, and in a houſe where he dried and manufactured ſheep-ſkins, which had a fire-place in it, and a fire

a fire in winter for the workmen, it was determined that the ſame was not liable.

And *ſky-lights*, and windows or lights in *ſtaircaſes*, *garrets*, *cellars*, *paſſages*, and in all other parts of dwelling-houſes, to what uſe ſoever applied, ſhall be charged. *ſ.* 2. Sky lights, &c.

Lights in ſtaircaſes] In *J. Gilbert*'s caſe, *Auguſt* 1750, it was determined, that one window which lighted two ſtaircaſes, one leading into the hall, and another into the kitchen, ought to be charged as two windows, in the ſame manner as a window giving light into two rooms. Staircaſes.

Caſe of *J. Kilby* of *York*, *September* 1778, who appealed againſt a ſurcharge of 22 windows in his *malt kiln*, which ſtood in a yard at a diſtance from his dwelling-houſe, and had no communication with any other building; that there were no windows or lights but which were neceſſary for admiſſion of air in making of malt, *&c.* and which are occaſionally opened or ſhut by wood doors or ſhutters. The commiſſioners diſcharged him from the ſaid ſurcharge; and the judges were of opinion their determination was right. Malt-houſe, mill houſe, and granaries.

J. Freeth, maltſter, occupies a meſſuage and *malt-houſe* and other buildings adjoining, was ſurcharged 18 windows in the malt-houſe, to which he appealed; on the hearing it appeared that the ſaid malt-houſe adjoins to the dwelling-houſe and is uſed only for making malt, except a lodging-room and lumber-room over the malt-houſe which communicates with the dwelling-houſe, but there is no communication between the dwelling-houſe and malt-houſe, except as above, that there is one window in each of the ſaid rooms. The commiſſioners thought the appellant ought to be charged for no more than thoſe two windows, diſcharged him from the 16 windows in the malt-houſe; but the judges were of opinion they were wrong.

Mr. *Rainbird* is the occupier of a dwelling-houſe, *mill-houſe* and *granaries* in *Ipſwich*, was charged 12 windows for the dwelling-houſe only; but the mill-houſe and granaries adjoining thereto, and with which there is a communication between them by a door out of the dwelling-houſe, was charged in all 27 windows. The commiſſioners thought the windows in the mill-houſe and granaries not liable; but the judges determined they were wrong.

In the caſe of *S. Wormald* of *York*, *Jan.* 1779, who was ſurcharged for 35 windows in his *brewhouſe*, *malt-* Brewhouſe, &c.

kiln, and *ſtorehouſes*. It appeared that the brewhouſe is built in a line with and adjoining to the end of his dwelling-houſe; that the malt-kiln is built on the ſide, and adjoining to the brewhouſe, and has a door into the ſame, but does not communicate with the dwelling-houſe; and that the ſtorehouſes are at a diſtance and totally diſjointed from the other houſes, and are uſed for depoſiting liquor in until delivered out to the retailer: The places charged as windows or lights in thoſe buildings are neceſſary to admit air, and are made up occaſionally with doors or ſhutters, and are not glazed, and are uſed ſolely for carrying on the buſineſs of a common brewer. The commiſſioners were of opinion that, although a brewhouſe is mentioned in the act, yet, from the other words with which it is claſſed, (viz. kitchen, ſcullery, &c.) was meant only ſuch brewhouſes as are uſed for family purpoſes, and are in the nature of houſehold offices, and not when occupied for trade only. And the judges were of opinion that the determination of the commiſſioners was right.

J. Pitt, innkeeper, appealed againſt a ſurcharge for two windows in his publick *brewhouſe* which adjoins to his dwelling-houſe, but has no communication therewith; it appeared that the ſaid brewhouſe is uſed only for carrying on the trade of an innkeeper, and not neceſſary in his private capacity. The commiſſioners diſcharged him from the two windows; but the judges determined they were wrong.

And in the caſe of *R. Wilſon* eſquire, who appealed againſt a ſurcharge for three windows in a *brewhouſe*: this brewhouſe has no communication with the dwelling-houſe, and the windows are uſed ſolely for letting out the ſteam at the time of brewing, and admitting air to cool the liquor, and are opened or ſhut by wood doors or ſhutters at the times of brewing only, not oftener than three days in a year. The commiſſioners confirmed the ſurcharge; and the judges determined they were right.

Water mill. Mr. *Haynes* appealed againſt a ſurcharge for 28 windows in a *water-mill*; this mill is a diſtinct building from the dwelling-houſe, and built of different materials, with windows of a different form from thoſe of the dwelling-houſe, and without glaſs, but has a communication by a door out of the ſaid mill into the dwelling-houſe. The commiſſioners thought as the mill was a diſtinct building, and communicated with the dwelling-houſe by one door only merely

merely for the ſake of convenience, cannot be deemed a part of the dwelling-houſe, allowed the appeal; but the judges determined they were wrong.

Meſſrs. *Strickland* and *Griffen* were ſurcharged 44 windows in their *ſugar refining houſe*, which houſe abuts on one other building occupied by the appellants' ſervants, and rated for 17 windows; that the ſaid ſugar-houſe has a communication during the hours of buſineſs only by an iron door-way into the compting-houſe, being part of the ſaid dwelling-houſe; and alſo another communication by another iron door-way in the cellar of the ſaid ſugar-houſe into the cellar of the ſaid dwelling-houſe, which iron doors are locked up every night: that the ſaid ſugar-houſe is a quadrangular building, within which no perſon reſides or ever did lodge or reſide therein, having been originally conſtructed for trade only. The commiſſioners thinking the ſaid ſugar-houſe was no part of the ſaid dwelling-houſe, diſallowed the ſurcharge; but the judges determined they were wrong. Sugar-houſes.

Mr. *Conſtantion*, ſugar refiner, appealed againſt an aſſeſſment for 62 windows in a *ſugar-houſe* uſed by him for refining ſugar: the ſaid building is of an irregular form, ſituate behind his dwelling-houſe; that there are two ways into the ſugar-houſe, one from the ſtreet immediately into the ſugar-houſe, by which the ſugar is carried to and from the manufactory; the other through the dwelling-houſe; the ſugar-houſe is not uſed as a dwelling-houſe, but the labourers employed in the buſineſs have a room in the ſame wherein they conſtantly dine, *&c.* The commiſſioners diſallowed the appeal; and the judges were of opinion they were right.

Meſſrs. *Carlick* and Co. appealed againſt a ſurcharge charging them with 145 windows in two *ſugar-houſes*, one of which is totally detached from the dwelling-houſe containing 58 windows, which was admitted by the ſaid ſurveyor upon a re-ſurvey to be detached; and the commiſſioners therefore ordered the ſaid 58 windows to be ſtruck off, the other houſe being joined to the dwelling houſe by a covered way containing 87 windows, the commiſſioners thought ought to be charged; and the judges thought their determination was right.

Mr. *Hoare* was aſſeſſed for four windows in his *work-ſhop* which adjoined to his dwelling-houſe, between which there was a communication within doors. The commiſſioners thought thoſe windows were not chargeable; but Workſhops.

the judges were of opinion their determination was wrong.

Mr. *Bracker* appealed againſt an aſſeſſment charging him with 43 windows belonging to his *workſhop*, and ſaid he occupied a dwelling-houſe four ſtories high, behind which, at nine feet diſtance, are built the ſaid workſhops, containing as many ſtories as the dwelling-houſe, in which workſhops there are not any lodging rooms; the doorway to the workſhops is from the ſtreet, and there is a paſſage incloſed between the ſaid workſhops and the dwelling-houſe, with a cloſet over the ſame (belonging to the workſhops) extending from one to the other ſix feet wide, ſo as to form a communication on the ground floor from the dwelling-houſe to the workſhops; the appellant alleged, that as the ſaid dwelling-houſe and workſhops were ſeparate buildings, with diſtinct walls and roofs, having no communication but by the ſaid paſſage on the ground-floor, he ought not to be rated for the windows in thoſe workſhops. The commiſſioners, by reaſon of the ſaid communication, thought him liable to be rated; and the judges were of the ſame opinion.

But in the caſe of *J. Shipley*, cabinet maker, it was determined, that he was not liable to pay for eight windows in a *workſhop* which was totally detached from his dwelling-houſe, where his journeymen cabinet-makers worked, and which was uſed for no other purpoſe.

Printing-office. *J. White* appealed againſt a ſurcharge of 25 windows in his printing-offices, into which from the ſtreet there is only one entrance into the dwelling-houſe and into a ſquare yard backwards, in which yard is a building adjoining to the ſaid dwelling-houſe, which is not lodged in, but made uſe on as *printing-offices* and *ware-rooms*; there is no way to the ſame but by a ſtaircaſe out of the ſaid yard; that underneath the ſaid printing-offices and ſtore-rooms, on the ground-floor, is a brewhouſe and back kitchen, having a grate and pot fixed, although now uſed as a ware-room; under another part of the building is an office for keeping accounts, into which brew-houſe, kitchen, and office, are ſeparate entrances from the ſaid yard. The commiſſioners diſmiſſed the appeal; and the judges were of opinion they were right.

Gaoler's houſe. *Borough* of *Stamford*. The *gaoler* was charged in reſpect of his dwelling-houſe, which is part of the gaol; on appeal the commiſſioners diſcharged him; but the judges were of opinion they were wrong. 16 *July* 1762.

Mr.

Mr. *Godbold*, attorney, was charged with two windows in a room in which he uſually writes and tranſacts his buſineſs as an attorney; and as the ſaid room is at a diſtance from, and has no covered way to his dwelling-houſe, he thinks thoſe windows not liable. The commiſſioners thought him liable; and the judges determined they were right. Attorney's office.

A. Johnſon eſquire, a juſtice of peace, appealed againſt a ſurcharge for two windows in two low rooms, without any lodging room or chamber over the ſame, and not adjoining to his dwelling-houſe, but at a diſtance from it, and having no covered way or other communication between the ſaid rooms and his dwelling-houſe; in thoſe rooms his clerk tranſacts buſineſs for him as a juſtice of peace; that he does not receive any emolument from the buſineſs tranſacted there. The commiſſioners allowed his appeal; but the judges were of opinion they were wrong. Juſtice of Peace's office.

Mr. *Gravenor* appealed againſt a charge of windows in a *porch* placed before the door of his dwelling-houſe, in which are three glazed pannels in the form of windows, which give no light to the dwelling-houſe, nor ever were intended for that purpoſe, the porch itſelf being meant to defend the door from the weather, and may be removed at pleaſure without injury to the houſe. The commiſſioners allowed the appeal; but the judges were of opinion they were wrong. Windows in a porch.

In the caſe of *S. White*, maſter of a charity-ſchool at *Great Torrington*, it was determined, that the maſter is liable to pay for the windows in that part of the premiſes which he inhabits, but not for thoſe which are in the ſchool room. School-houſe.

Mr. *Flynn* appealed againſt a ſurcharge of 12 windows in a room behind his dwelling-houſe uſed as an *aſſembly* and *tea-room*, which is detached 70 feet from his dwelling-houſe, and has no covered way or communication between them. The commiſſioners thought that although ſuch room was detached from the dwelling-houſe, yet as there was but one ſingle entrance to the whole premiſes, diſallowed the appeal; and the judges determined they were right. Aſſembly-room detached from the houſe.

J. Hannam and Co. have a houſe at *Gillingham* for carrying on the *ſilk manufactory*, and have many children from different charities in *London*, who live and ſleep by themſelves in the ſaid houſe, and not any of Mr. *Hannam*'s family with them; part of the ſaid houſe is appropriated Silk manufactory.

to the silk work, and the rest to the children as above; the assessors charged the whole as a dwelling-house, which the commissioners allowed; and the judges were of opinion they were right.

Dairies, &c. Case of *Diss* in *Norfolk*, 3 *July* 1775. It was determined by the commissioners, that *dairies* and *cheese chambers* are not liable; but the judges were of opinion that the determination of the commissioners was wrong.

But in the case of *R. Upson*, of *Woolbridge Suffolk*, *August* 1780, who was surcharged for 4 windows in a dairy and cheese chamber over the same, being a separate building and not adjoining to his dwelling-house; on appeal, the commissioners were of opinion, the said 4 windows were not chargeable; and the judges were of opinion their determination was right.

At a meeting of the commissioners held at *Claydon* in *Suffolk*, *August* 1782, there were several appeals against surcharges made on different persons for dairies and cheese chambers, which adjoined to their dwelling-houses, but which had no internal communication therewith; which surcharges were disallowed by the commissioners; but the judges were of opinion their determination was wrong.

But by 36 *G.* 3. *c.* 117. after 5th *April* 1796, no windows or lights shall be assessed in any dairies or rooms, or places kept and used for the sole purpose of drying and keeping cheese, or of making cheese or butter, and to or for no other purpose whatsoever, which shall be belonging to and occupied with any dwelling-house chargeable with the duties aforesaid, whether the same be attached to, or detached from, and being part of such dwelling-house or not, and which shall be occupied by any person who shall sell, or be in any manner concerned in selling the produce of dairies. *s.* 1. 38 *G.* 3. *c.* 40. *s.* 8.

Provided nevertheless, that such exemption shall extend only to such windows or lights in such dairies or rooms as shall be made with splines or wooden laths, or iron bars, and wholly without glass, and which shall not be at any time used to dwell or sleep in, but solely kept and used for the purposes aforesaid. *s.* 2. *Id.*

Provided also, that the owner of the dwelling-house to which such dairies or rooms belong, shall paint on the door thereof in large ROMAN black letters two inches at least in height, and of a proportionable breadth, the words *Dairy* and *Cheese Room*, as the case may be, and shall keep the same legible during such time as such rooms shall be used

for

for such purposes, otherwise they shall be chargeable with the duties to which they were liable previous to the passing this act. *s.* 3. 33 *G.* 3. *c.* 40. *s.* 8.

Cottages.

Provided, that no duty shall be paid for any *cottage* or tenement containing not more than six windows in the whole, the occupier whereof, by reason of his poverty only, and not for any other cause, is exempted from the actual payment of the usual taxes to church and poor. 38 *G.* 3. *c.* 40. *s.* 5.

Inns of court, colleges, bodies politick and corporate, and hospitals.

And every chamber or apartment in the *inns of court* or *chancery*; or in any college or hall in the *universities*; or in any hall or office belonging to any person, *body politick* or *corporate*; or any *publick* hospital, being severally in the tenure and occupation of any person chargeable to the said duties, containing eight windows or under, shall be charged 2 *s.* for each; and if containing more than eight windows, shall be subject to the duties hereby granted as an entire house. *Id. s.* 6.

In hospitals, &c. the apartments occupied by officers and servants liable.

Provided, that nothing herein shall extend to subject any *hospital*, *charity school*, or *house provided for the poor*, to the payment of the said duties, except such apartments therein as are occupied by the officers or servants belonging thereto, which shall be subject to the same duty (according to the number of windows in each) as other inhabited houses. *Id. s.* 7.

Chapels.

Provided always, that nothing herein shall charge with the said duty, any room licensed as a *chapel* for divine worship and used for no other purpose whatsoever. *s.* 8.

Houses left to servants, &c.

But every house whereof the keeping only is committed or left to a person or servant who pays not to church and poor, shall pay as if inhabited by the occupier or tenant. 20 *G.* 2. *c.* 3. *s.* 33.

Infants how chargeable.

Parents and guardians of infants, on default of payment by such infants, shall be liable, and may be proceeded against as other persons making default. 20 *G.* 2. *c.* 3. *s.* 15. 24 *G.* 3. *c.* 38. *s.* 36.

House standing in two parishes.

One entire house in *Ipswich*, stands in two parishes, and contains 25 windows in the whole, was charged 16 windows in one parish and 9 in the other, which the commissioners allowed; but the surveyor was dissatisfied, thinking this not a parochial charge, and that the whole ought to be charged in one parish; and the judges were of the same opinion.

And in the case of Mr. *Gooch* the same point came in question, there being 14 windows in that part of his house which stood in one parish, and 4 in that part which

ſtood in another; and it was determined that the whole ought to be aſſeſſed in the pariſh where there was the greater number.

Several windows in one frame.

And where ſeveral windows are fixed in one *frame*, if the partition or diviſion between them is of the breadth of 12 inches, the window on each ſide of the partition ſhall be deemed a diſtinct window. 20 *G.* 2. *c.* 3. *ſ.* 38.

Windows on each ſide and above a door.

Borough of *Doncaſter*, *Nov.* 18, 1767. There was a window above and on each ſide of the door: and the windows on the ſides were within the ſpace of 12 inches from the window above the door; but the windows were in ſeparate frames. And this was holden not to be within the act, ſo as to be chargeable as one window only, but as three diſtinct windows.

Alſo in a caſe in the diviſion of *Hagg Eaſt* in the north riding of *York*, *July* 1775. There were ſeveral appellants who were occupiers of dwelling-houſes and ſhops in *Bedal*, which ſhops fronted the ſtreet, and into each ſhop there is a door in the middle, and on each ſide thereof a window, and alſo glaſs over the top of the door, all which are in one frame, and not 12 inches between light and light. The ſurveyor made a ſurcharge, by charging the ſame with two lights, one on each ſide of the door, inſtead of one light only, with which the ſaid frame had been always before charged. On appeal, the commiſſioners determined that the ſame ought to be charged as one light only; but the judges were of opinion their determination was wrong.

But in the caſe of *R. Sumner* of *Farnham*, *Jan.* 1779, who appealed againſt a ſurcharge made on a ſaſh door in the back part of his houſe, at the ſame time he had a ſaſh door in the front of his ſhop between two lights, one on each ſide thereof in one frame, the ſills of the ſaid lights and glaſs of the ſaid door being on a line, and within the diſtance of 12 inches, yet the ſurveyor charged them as two lights. The appellant thought that if the ſaſh door was a light in one ſituation, it muſt be ſo in the other; and the commiſſioners, on appeal, were of the ſame opinion. The judges were of opinion, that the whole window in the ſhop is to be taxed as one light, and alſo the glaſs door in the back part as one light.

But notwithſtanding the above, in the caſe of *C. Banks* of *Bewdley*, *Jan* 1788, who was ſurcharged for 3 windows in a room which had formerly been a ſhop, in the front thereof was one entire frame of wood in which was a door in the middle, the upper half whereof was glaſs, and alſo a window

window on each ſide, and alſo glaſs over the door; that it had been in the ſame manner for 30 years, and had been always charged as one window only; and the commiſſioners being of that opinion, took off the ſurcharge of 2 windows; but the judges were of opinion their determination was wrong.

Window the whole length of a kitchen, with a door in the middle.

The Rev. Mr. *Davies* appealed againſt a ſurcharge of 2 windows; the windows in queſtion are all in one frame, and go the whole length of the kitchen; and although from neceſſity a door-way is made through part of the ſaid windows, yet as (beſides being in one frame) they are not 12 inches apart, they ſhould be charged as one window. The ſurveyor admitted the above ſtatement; but apprehending the window over the door-way and over the other 2 windows is an evaſion, and the door-way being 30 inches wide, he was right in charging them. The commiſſioners allowed the appeal; but the judges were of opinion they were wrong.

Making two windows into one, deemed fraudulent.

And in the caſe of the city of *Oxford*, *June* 19, 1759; where two windows were made into one, by joining them together in one frame, and the partition was of leſs breadth than 12 inches: this was held by the judges to be fraudulent, and the windows liable to be charged as two diſtinct windows.

So in the caſe of *Sidbury*, *June* 27, 1757; where the owner, in order to reduce the number of his windows, had fixed betwen two of the windows a piece of glaſs of four inches in breadth and eleven inches in length: this was held by the judges to be a manifeſt evaſion of the act, and the windows therefore liable to be charged as two diſtinct windows.

Bow windows.

Caſe of *W. Greenleaf* of *Ipſwich*, 3 *July*, 1775. He built an houſe of brick, in the front of which were four bow windows. In conſtructing which windows, the timber work, comprehending the front and return at each end of the bow, was made in one entire frame, and ſo worked into the building. But by reaſon of a caſing of brick work at the outſide of each angle of the bow, it had externally a greater diſtance than 12 inches between light and light; though within, the timber frame was no more than eleven inches between light and light. The aſſeſſors charged each of theſe bow windows as but one light, from the circumſtance of there being but eleven inches diſtance in the wood work between one light and another. But the ſurveyor, judging by the external appearance of each window, as it meaſured more than 12 inches without,

surcharged the same as three distinct lights. The commissioners confirmed the surcharge. And the judges were of opinion, that the determination of the commissioners was right.

Window enlightening two rooms.

And all windows in frames which shall give light into more rooms than one, shall be charged as so many separate windows as there are rooms enlightened thereby. 20 *G.* 2. *c.* 3. *s.* 38.

Windows stopped up.

And by 38 *G.* 3. *c.* 40. after 10th *May* 1798, no window shall be deemed to be stopped up, unless done effectually with stone or brick, or with the same kind of materials whereof that part of the outside walls of such house doth chiefly consist. *s.* 10.

Provided, that nothing herein shall extend to any window in the roof which shall be stopped up effectually with materials of the like nature of which the outside of such roof shall chiefly consist. *s.* 11.

Opening them again, or making new windows.

And no window shall be new made in any dwelling-house, or office belonging thereto; nor any window which was stopped up at the time the assessment was made for that year, shall be restored; nor shall any window be stopped up, without, in each case, six day's previous notice thereof in writing being given by the occupier, to the surveyor or inspector for the place, describing therein the particular situation of every such window, and the number thereof, if more than one; on pain of forfeiting by such occupier 10*l.* for every such window, over and above any duty payable in respect of such dwelling-house; to be recovered as herein directed. *s.* 12.

Surveyor to certify windows newly made or restored.

And in case any such surveyor or inspector shall receive any such notice as aforesaid, or shall otherwise discover that any window liable to duty, hath been newly made or restored as aforesaid, which hath not been charged in the assessment for that year, he shall certify the same in writing under his hand, by way of charge to two commissioners, and shall state in such certificate to what amount such person hath been under-rated in the assessment for that year; and thereupon the said commissioners shall cause such assessment to be rectified according to such certificate, and the duties so charged shall be levied thereon from the commencement of that year as if the same had been originally included in such assessment. Provided that such assessment so amended, shall be liable to appeal, in like manner as if the same had been originally so made. But no assessment shall be subject to appeal, nor any abatement be allowed, by reason of any window being stopped up, unless

Assessment to be rectified.

Appeal.

unleſs it ſhall be proved to the ſatisfaction of the commiſſioners, that the ſame was ſtopped up previous to the 5th day of *April* next before making the aſſeſſment. *ſ.* 13, 14.

Where an houſe ſhall be inhabited by two or more perſons or families, it ſhall pay as if it was inhabited by one perſon or family only. 20 *G.* 2. *c.* 3. *ſ.* 31. Two families in one houſe.

J. Archer and *T. Gun*, labourers, being charged jointly with 14 windows in their two dwelling-houſes, appealed and ſtated, that their houſes were formerly occupied as one houſe, for about three years it has been divided into two dwellings, it is divided by a paſſage that runs quite through the middle; there is only one door of entrance in the front into the paſſage, where each has a door, one on the right, and the other on the left, into each dwelling, which are entirely diſtinct, having no ſort of communication one with the other, having two pair of ſtairs, &c. The rent is 2*l.* 16*s.* each, and in all pariſh rates they are rated and pay diſtinctly at 2*l.* a-year. The commiſſioners thought they ought to pay as one entire houſe; but the judges were of opinion their determination was wrong. One houſe divided into two ſeparate dwellings.

Where any dwelling-houſe is let in different apartments to ſeveral perſons, and the landlord of ſuch houſe pays other taxes and pariſh rates for the ſame; ſuch landlord ſhall be deemed the occupier of ſuch dwelling-houſe, and be charged with the duties for the ſame, as an entire houſe. 20 *G.* 2. *c.* 3. *ſ.* 35. 24 *G.* 3. *c.* 38. *ſ.* 30. Houſe let in different apartments.

Mr. *Search* appealed againſt an aſſeſſment on eight houſes in *Holborn* he lets to inmates, for 10 windows or more in each houſe; the landlord doth not pay the church and poor rates for theſe houſes, but pays other pariſh rates for the ſame (ſuch as ſcavenger and watch). The commiſſioners allowed the appeal; but the judges were of opinion they were wrong.

William Ripley of *Whitby*, being in poſſeſſion of a new-built houſe at *Whitby*, containing 7 ſtories high, which he has divided and let to 20 different tenants of two rooms to each; the way into this houſe (which is all under one roof) from the ſtreet, is into an open piece of ground called a paſſage, from thence by means of galleries erected for that purpoſe, into as many ſtaircaſes; and the apartments in one of theſe ſtaircaſes have no communication with the apartments in another ſtaircaſe. Theſe houſes are let to very poor people, who are incapable of paying any

any ſort of taxes, nor does Mr. *Ripley* in reſpect thereof pay any taxes except the land tax, which he hath hitherto paid for the ſaid houſe. Mr. *Ripley* was aſſeſſed for the ſaid houſe, as landlord, for 44 windows, altho' he does not live in any part thereof. On appeal, the commiſſioners gave him no relief; and the judges were of opinion, that the determination of the commiſſioners was right.

Mr. *Wilkin* occupies a dwelling-houſe with a ſhop on the ground floor in the front next the ſtreet, and the rooms over the ſhop are uſed by him; formerly the ſhop was occupied by Mr. *Wilkin*'s father, and there was then a communication between the ſaid ſhop and the dwelling-houſe which is now entirely ſtopped up, and the ſhop is let to an apothecary who lives in another part of the town, and is made uſe of as a ſhop only, but the aſſeſſors conſidered it as a part of the dwelling-houſe, and charged Mr. *Wilkin* with two windows in the ſhop, againſt which he appealed, but the commiſſioners did not relieve him, as the act ſays, "where any dwelling-houſe is let in dif-"ferent apartments the landlord ſhall be deemed the oc-"cupier, &c." and the judges thought their determination was right.

W. Dawſon Eſq. is poſſeſſed of an ancient houſe in *Settle* in *Yorkſhire* containing three ſtories, which he has divided and let into five or ſix different tenements of two or three rooms to each; the way into the houſe (which is all under one roof) from the ſtreet, is by ſeparate doors into the different apartments, ſome being in the front, and others to the back part of the houſe; all the inner doors of communication are walled up, or otherwiſe ſeparated: Theſe apartments are let to the pooreſt of the people in *Settle*, who do not, and indeed are not capable of paying any ſort of taxes, Mr. *Dawſon* paying every parochial aſſeſſment for the ſaid houſes; he was aſſeſſed as landlord for 15 windows being the number in the ſaid houſe, againſt which he appealed to the commiſſioners, who gave him no relief, and the judges were of opinion they were right.

Sky-lights. And *ſky-lights*, and windows in *ſtair-caſes*, *garrets*, *cellars*, *paſſages*, and in all other parts of dwelling-houſes, to what uſe ſoever applied, ſhall be charged. 21 *G.* 2. *c.* 10. *ſ.* 2.

Lights in ſtair-caſes. *Lights in ſtaircaſes*] In *J. Gilbert*'s caſe it was determined, that one window which lighted two ſtaircaſes, one

one leading into the hall, and another into the kitchen, ought to be charged as two windows, in the ſame manner as a window giving light into two rooms.

New duties to be aſſeſſed and collected as former duties.

And the ſeveral rates and duties by this act granted, ſhall be aſſeſſed, collected, and received in like manner, and with ſuch penalties, forfeitures, and diſabilities, and according to ſuch rules, methods, and directions, as are preſcribed by any act now in force for raiſing the duties hereby repealed, or any other duties under the management of the commiſſioners for taxes, and are not altered by this act; except all clauſes of exemption contained in 6 *G.* 3. *c.* 38.—24 *G.* 3. *c.* 38. & 37 *G.* 3. *c.* 69. And all powers, authorities, methods, rules, directions, penalties, forfeitures, clauſes, and things contained in any act in relation to the duties hereby repealed, ſhall be in as full force (except ſuch clauſes of exemption as aforeſaid) as if re-enacted herein. 38 *G.* 3. *c.* 40. *ſ.* 17.

Aſſeſſments to be made for a year, and charged upon the occupier.

Exception.

And every aſſeſſment ſhall be made for a year from the 5th day of *April* yearly, and the duties ſhall be charged upon the occupier for the time being or his executors or adminiſtrators. Provided always, that in all caſes where the duties hereby repealed are directed to be paid by the landlord, he ſhall be liable to the duties hereby granted. *ſ.* 3.

Where the occupation is changed within the year.

And the duties hereby charged on the occupier of any houſe, cottage, or tenement, ſhall be levied upon ſuch occupier for the time being, without any new aſſeſſment for that year, notwithſtanding any change in the occupation thereof. *ſ.* 4.

Obſtructing the aſſeſſors.

And if any perſon ſhall wilfully obſtruct or moleſt any aſſeſſor in the execution of his duty, he ſhall forfeit 5 l. to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 14.

Aſſeſſors to aſſeſs themſelves.

And the aſſeſſors ſhall aſſeſs themſelves and the commiſſioners, as other perſons are aſſeſſed. *ſ.* 16.

Day for bringing in the aſſeſſments.

And the commiſſioners ſhall then and there prefix a day for the perſons to appear before them, and bring in their aſſeſſments in writing under their hands; ſetting forth therein the names and ſurnames of the ſeveral occupiers or inhabitants of each reſpective dwelling-houſe chargeable, the number of windows or lights, and the ſeveral ſums they ought to pay. 20 *G.* 2. *c.* 3. *ſ.* 6.

Which day ſhall be on or before *June* 4 yearly. *ſ.* 7. (B).

iii. Third meeting; ſigning the aſſeſſment, with warrant to collect.

Aſſeſſment delivered in.

The aſſeſſors appearing at the day appointed, ſhall deliver in their aſſeſſments, to be verified upon their oaths, and not otherwiſe. 20 *G.* 2. *c.* 3 *ſ.* 6.

Returning the names of collectors.

And ſhall then return the names of two or more able and ſufficient perſons to be collectors, for whom the pariſh or place ſhall be anſwerable. *Id. ſ.* 6. 38 *G.* 3. *c.* 40. *ſ.* 20.

Signing the aſſeſſment.

At which time alſo three or more of the commiſſioners ſhall ſet their hands to the aſſeſſments, teſtifying their allowance thereof. *ſ.* 9.

Note; It is not neceſſary by the words of the act that the ſame ſhall be ſealed.

Appointing collectors.

And they ſhall alſo appoint two of the perſons named in the aſſeſſment, or any two others whom they ſhall think ableand reſponſible, to be collectors (*a*). *Id.* (C).

Within the bills.

And within the bills the collectors ſhall be appointed by two commiſſioners. 38 *G.* 3. *c.* 40. *ſ.* 16.

Pariſhes to be anſwerable for collectors.

And the pariſh or place for which any perſon ſhall be appointed collector, ſhall be anſwerable for his duly demanding the ſaid duties of the reſpective perſons charged therewith, within ten days after the ſame are payable, and alſo for his paying the ſums by him received, to the receiver general; and if he ſhall neglect or refuſe to demand payment of the ſaid duties of the reſpective perſons charged therewith, or to leave a demand in writing at their reſpective places of laſt abode within the time herein limited; or in caſe of default in payment upon ſuch demand, ſhall neglect or refuſe to execute the warrant or precept of the commiſſioners or juſtices for recovering of the ſame, within two calendar months after the ſaid duties are payable; it ſhall not be lawful for ſuch collector to inſert in the ſchedule to be by the receiver general returned into the exchequer, the name of any ſuch perſon as having made ſuch default, but the pariſh or place ſhall be anſwerable for the ſame; and no collector ſhall be allowed to inſert in any ſuch ſchedule the name of any perſon to be returned into the ex-

---

(*a*) Where there has been a neglect in appointing collectors, or they refuſe to act. See *ante*, under firſt meeting.

chequer as not having paid the duties, unleſs he make oath before two commiſſioners or juſtices, that the ſum for which ſuch perſon is ſo returned, is due and wholly unpaid, to the beſt of his knowledge and belief; and that ſuch defaulter is unable to pay the ſame, and by reaſon of his poverty is exempted from payment of the taxes to church and poor, or that he became inſolvent, or removed from ſuch pariſh or place before the day the duties became due, and had not, nor did leave, nor are there goods ſufficient whereon to levy the ſame within ſuch pariſh or place, ſince the ſaid duties became payable; and that there was not, nor are any goods of any other perſon liable to the payment of the ſaid duties in arrear, whereby the ſame, or any part thereof could be levied; which oath ſhall be indorſed on ſuch ſchedule, and ſhall ſpecify the names of the perſons making ſuch default, and the reaſon for returning each ſuch defaulter. 38 *G.* 3. *c.* 40. *ſ.* 20.

Arrears to be re-aſſeſſed upon the pariſh.

And every arrear ariſing by default as aforeſaid, or by failure of any collector for which any pariſh or place ſhall be anſwerable, ſhall be re-aſſeſſed and charged upon the ſame, on the amount of the aſſeſſment for the ſucceeding year, by duly apportioning the amount of ſuch arrear amongſt the ſeveral perſons aſſeſſed in that year, according to each perſon's aſſeſſment, as nearly as the caſe will admit, and by the like rules as the original aſſeſſment was made, and to be levied in like manner as any re-aſſeſſment may be by law. *ſ.* 21.

Warrant to collect.

Alſo on delivery and return of the aſſeſſments, three or more commiſſioners ſhall, at leaſt ten days before the rates ſhall become due, iſſue their warrants or eſtreats under their hands and ſeals, to the collectors, for the ſpeedy collecting and levying the ſame, as they ſhall become due and payable. *Id. ſ.* 7.

And they ſhall forthwith deliver the aſſeſſment ſo allowed of, to the collectors. *ſ.* 9.

Collector refuſing to act.

Collectors refuſing to take their offices, ſhall forfeit 5 l. 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3. & by 38 *G.* 3. *c.* 40. *ſ.* 18. 20.

Appointing the time for appeal.

Then three or more commiſſioners ſhall alſo give the collectors notice when and where the appeals of any perſons who ſhall think themſelves over-rated, may be heard and determined. *Id. ſ.* 12.

And all appeals which ſhall be made between *Mar.* 25, and *Aug.* 20, yearly, ſhall be heard and determined by the commiſſioners upon ſuch days as ſhall be by them appointed

ed between *Aug.* 20, and *Sept.* 15. And all such other appeals as shall be made between *Sept.* 29, and *Jan.* 20, yearly, shall be heard and determined upon such other days as shall be appointed between *Jan.* 20, and *Feb.* 10. 21 *G.* 2. *c.* 10. *s.* 7.

Remedy where the commissioners have omitted their duty.

And where the commissioners shall have omitted to execute the powers to them given, within the time, and according to the manner above prescribed, two or more of them may meet, and execute the same at any other times, as there shall be occasion. 20 *G.* 2. *c.* 42. *s.* 1.

Surveyors to examine and survey.

At this third meeting likewise comes in the business of the surveyors, who shall be appointed by the king, or three commissioners of the treasury; who shall appoint them such salaries as they shall think reasonable. 20 *G.* 2. *c.* 3. *s.* 30. 42, 43.

And they shall have power to examine the assessments, before they are signed and allowed by the commissioners; and at seasonable times, with a constable, to view and examine whether there be any more windows than are assessed, and to pass for that purpose through any house, to go into any court, yard, or backside thereunto belonging, and externally to view the windows which cannot be conveniently seen or numbered without going thro' such house; and this they may do twice a year. *Id. s.* 30.

Constables to be assisting.

And the constables, and other his majesty's officers, shall be assisting; and shall also obey and execute the warrants of the commissioners to them directed. *Id. s.* 22.

Obstructing the surveyor.

And if any person shall wilfully obstruct or molest any surveyor in the execution of his duty, he shall forfeit 5 *l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *s.* 14.

iv. Fourth meeting; the appeal.

Notice of the appeal day to be given in the church.

Every collector shall, within ten days after notice from the commissioners of the time and place of appeal, cause publick notice to be given in every parish church or chapel within his district, immediately after divine service, on the Lord's day, (if any such divine service shall be performed there within that time,) of the time and place so appointed by the commissioners for hearing and determining appeals: And shall also on the same day, cause the like notices to be fixed in writing on the door of such church or chapel. 20 *G.* 2. *c.* 3. *s.* 12.

Surveyor to give in his surcharge.

And after the rates are signed and allowed by the commissioners, if the surveyor finds on his survey that any

houſes or lights have been omitted, or are under-rated, he ſhall certify the ſame in writing under his hand, by way of ſurcharge, on or before *Aug.* 10, and *Jan.* 10, yearly, to any three or more commiſſioners, in order to have ſuch omiſſion or under-rate certified in the aſſeſſment. 20 *G.* 2. *c.* 3. *ſ.* 37. 21 *G.* 2. *c.* 10. *ſ.* 6. 24 *G.* 3. *c.* 38. *ſ.* 28.

And he ſhall alſo leave a written notice at the dwelling-houſe of every occupier ſo ſurcharged, that he intends to charge them for ſuch number of windows or lights as are charged in ſuch certificate. 21 *G.* 2. *c.* 10. *ſ.* 6.

Notice of appeal.

And every perſon intending to appeal ſhall give at leaſt ten days' notice thereof in writing to the ſurveyor, or to one or more of the aſſeſſors. *ſ.* 8.

Aſſeſſment not to be altered but on a general appeal day.

And no aſſeſſment ſhall be altered or diminiſhed, except only on hearing the appeal, upon a general appeal day. *ſ.* 5.

Surveyors may be preſent.

And the ſurveyor, aſſeſſors, and appellant may be preſent during the time of hearing and determining the appeal, unleſs they miſbehave. *ſ.* 8.

Commiſſioners intereſted to withdraw.

And in caſe of any controverſy ariſing between the commiſſioners concerning the aſſeſſments, the commiſſioners that ſhall be concerned therein ſhall have no voice, but ſhall withdraw during the debate, until it be determined by the reſt of the commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 21.

Surveyor to make oath that he gave notice.

The ſurveyor appearing to make good his ſurcharge, ſhall make oath that a written notice was left at the dwelling-houſes of the ſeveral occupiers ſo ſurcharged, that he intended ſo to ſurcharge them. 21 *G.* 2. *c.* 10. *ſ.* 6.

Parties to be examined on oath.

At the appeal, the commiſſioners ſhall examine the parties complaining, upon oath, concerning their number of windows or lights. 20 *G.* 2. *c.* 3. *ſ.* 12.

And they ſhall not make any abatement of the charge or ſurcharge, unleſs it doth appear upon oath, that ſuch perſon is over-rated. 21 *G.* 2. *c.* 10. *ſ.* 8.

How far the appeal determined ſhall be final.

Appeals determined ſhall be final: Except that if the ſurveyor or appellant ſhall then declare himſelf diſſatisfied with the determination of the commiſſioners, they ſhall, at ſuch perſon's requeſt, ſtate ſpecially and ſign the caſe upon which the queſtion aroſe, together with their determination thereupon, and cauſe the ſame to be delivered to the party, to be by him tranſmitted to one of the judges; who ſhall with all convenient ſpeed return an anſwer, with his opinion ſubſcribed; according to which the aſſeſſment ſhall be altered or confirmed; provided that the determination

tion of the commiſſioners ſhall ſtand, with reſpect to the payments which ſhall be due precedent to the opinion upon the caſe certified by the judge. 21 *G.* 2. *c.* 10. *ſ.* 9, 10. 24 *G.* 3. *c.* 38. *ſ.* 46, 47.

Coſts. Provided, that if according to the opinion of the judges to whom ſuch caſe ſhall, at the requeſt of the appellants be ſo tranſmitted, the charge or ſurcharge ſhall be confirmed, ſuch perſon ſhall for the coſts attending the ſame, pay to the uſe of the king 40 s. in addition to ſuch charge or ſurcharge, or part thereof ſo confirmed as aforeſaid, which coſts ſhall be added to ſuch aſſeſſment, and levied accordingly. 38 *G.* 3. *c.* 40. *ſ.* 28.

Provided alſo, that if the commiſſioners before whom any appeal ſhall be depending, ſhall, previous to their determination thereupon, be deſirous of obtaining ſuch opinion, they may ſtate ſpecially, after communicating to the party complaining ſuch intended ſtatement, and ſigning the caſe upon which the doubts aroſe; and they ſhall adjourn ſuch appeal, until ſuch opinion be obtained, and the judges or one of them, ſhall, with all convenient ſpeed, tranſmit his opinion thereon, which ſhall be final, and the ſaid commiſſioners ſhall not be ſubject to any coſts. *ſ.* 29.

v. Collecting.

Collector to make demand; The collectors ſhall make demand of the parties chargeable, or at the places of their laſt abode, within ten days after the duties ſhall become due and payable. 20 *G.* 2. *c.* 3. *ſ.* 7.

and give receipts. And on payment thereof, they ſhall give acquittances *gratis*; which ſhall be a full diſcharge to the perſon paying the ſame. *Id.*

May diſtrain. And if any perſon ſhall refuſe to pay to the collector on demand, he may diſtrain ſuch perſon by his goods; and ſhall keep the diſtreſs four days at the owner's coſt; and if not paid in the ſaid four days, then the diſtreſs ſhall be appraiſed by two inhabitants, and there ſold by the officer; the overplus (if any) over and above the charges of taking and keeping the diſtreſs, to be immediately reſtored to the owner. *ſ.* 11.

And where any refuſal, neglect, or reſiſtance ſhall be made, it ſhall be lawful by warrant of three commiſſioners to break open any houſe in the day-time, calling in the conſtable to aſſiſt. *Id.*

And

And no goods whatever in any dwelling-house, or any of the offices thereto belonging, which shall have been assessed to any of the duties hereby granted, shall be liable to be taken by virtue of any execution or other process, warrant, or authority, except at the suit of the landlord for rent (other than at the suit of the king), unless the party shall before sale, or removal of such goods from the premises, undertake in writing to pay to the collector all arrears of duty which shall be due at that time, provided that the same be not in arrear for more than one year; and if for more than one year, then the said party prosecuting such suit, paying to the said collector the duties due for one year, may proceed in his seizure as he might have done before the making of this act: but in case of refusal, the said collector may distrain such goods, and proceed to sale according to the laws now in force, in order to obtain payment of the said duties in arrear for one year: And all remedies concerning bankrupts, or concerning the method of recovering rent in arrear given to creditors, lessors, or landlords, and all powers and provisions of 27 *G.* 2. *c.* 20. (*a*) *for the more effectual proceeding upon distress*; and 33 *G.* 3. *c.* 55. (*b*) *authorizing justices to impose fines on constables, &c. for neglect of duty*, shall be used and practised by the commission for executing this act, and by any collector, surveyor, or inspector for recovering such arrears, over and above all other powers contained in any act relative to the duties hereby repealed, or in this act. 38 *G.* 3. *c.* 40. *s.* 23.

No goods to be taken by any process, except at the suit of the king, or for rent not exceeding for one year.

On refusal of payment collectors may distrain.

And if sufficient distress cannot be found, three commissioners by their warrant may commit any person who shall refuse or neglect to pay for 20 days after demand, to the common gaol, until payment shall be made. *Id.*

Commitment for want of distress.

Arrears may be levied by the commissioners in the same manner as the rates and duties. 21 *G.* 2. *c.* 10. *s.* 17.

Levying arrears.

Where the occupier removes without paying the rates, the commissioners are to transmit a certificate thereof to the commissioners where the person resides; who shall cause the same to be levied and paid to the collectors of the place from whence the person did remove. 20 *G.* 2. *c.* 3. *s.* 41.

Occupier removing.

(*a*) See the provisions of this act, title **Distress** by justices of peace.

(*b*) See this act, title **Constable.**

And after 5th *April* 1798, if any occupier of any dwelling house assessed to any of the said duties, shall remove out of the limits of the collector, without paying the duties then due, or without leaving sufficient goods whereon to levy the said duties in arrear; he shall forfeit over and above the said duties so left unpaid, 20l. to be recovered as herein directed. 38 *G.* 3. *c.* 40. *s.* 22.

vi. Collectors paying to the receiver.

Collector to pay to the receiver.

The collectors shall pay in the money received, within 20 days after the receipt thereof, to the receiver general or his deputy, at such place as the commissioners shall appoint. 20 *G.* 2. *c.* 3. *s.* 7.

Provided that the collectors shall not be obliged to travel above ten miles from their habitations, to pay the money collected. *s.* 24.

Receiver to give acquittances.

Which receiver general shall give acquittances *gratis*; which shall be a full discharge to the collectors. *s.* 21.

Deputy receiver.

And the said receiver general shall give notice of his appointment of a deputy (which appointment shall be under hand and seal) unto three or more commissioners, within 20 days after their first meeting, and within 20 days after the death or removal of any deputy. *s.* 23.

Collector to have 3d. a pound.

Every collector shall have 3d. in the pound, for what money he shall pay to the receiver general. *s.* 11.

Collector failing.

And if the collector shall neglect or refuse to pay the money by him received at the time appointed, three or more commissioners may imprison his person, and seize and secure his estate as well freehold as copyhold, and all other estate both real and personal to him belonging, or which shall come to his heirs, executors or administrators: which commissioners may appoint a time for a general meeting of the commissioners, giving publick notice thereof ten days before; and the commissioners at such general meeting may sell such estates, or any part of them, for payment. *s.* 16.

And if there be any arrear, by reason of the failure of a collector for whom the parish or place is answerable, three commissioners may cause it to be reassessed in such parish or place. *s.* 34.

Returning arrears into the exchequer.

And the collectors shall deliver a schedule of arrears to the receiver general, to be by him returned into the ex-

chequer, that proceſs againſt the defaulters may be iſſued from thence. *ſ.* 21.

The receiver general returning any perſons in arrear who have paid, ſhall forfeit double damages to the party, and double the ſum to the king. *ſ.* 25.

And no receiver ſhall return any perſon in arrear in his accounts, unleſs ſuch account be paſſed in the exchequer, within two years after the end of the year for which ſuch rate ſhall be payable, but the ſame ſhall be a debt on him and his ſecurities. *ſ.* 26.

vii. Receiver paying into the exchequer.

Times of paying into the exchequer.

The receiver general ſhall pay the ſum received into the exchequer, by four quarterly payments (*viz. Jan.* 5, *April* 5, *July* 5, and *Oct.* 10,) or in 40 days after the reſpective quarterly pay days; on pain of 500l. to him who ſhall ſue. 20 *G.* 2. *c.* 3. *ſ.* 10. 6 *G.* 3. *c.* 38. *ſ.* 6.

Receiver's allowance.

And he ſhall have an allowance of 2d. in the pound for the money he ſhall pay into the exchequer. *ſ.* 11.

viii. Duplicates to be tranſmitted into the exchequer.

Tranſmitting the duplicates.

The commiſſioners ſhall cauſe true duplicates of the aſſeſſments to be made out, within three months at fartheſt after *Mar.* 25 yearly; the appeals being firſt heard and determined. Such duplicates to be made for the ſame hundreds, wards, pariſhes, or places, for which diſtinct duplicates are and have been uſually made out for the land-tax; and the names and ſurnames of the aſſeſſors and collectors reſpectively ſhall be inſerted therein. 20 *G.* 2. *c.* 3. *ſ.* 10.

One of which duplicates ſhall be delivered to the receiver general, and another tranſmitted into the office of the king's remembrancer in the exchequer; for which the proper officer ſhall give acquittances *gratis*. *Id.*

Commiſſioners' clerks to have 1½d. a pound.

All which being done, the commiſſioners' clerks, for the careful writing and tranſcribing the aſſeſſments, warrants, eſtreats, and duplicates in due time, ſhall by warrant under the hands of three commiſſioners receive 1½d. in the pound, to be paid by the receiver general. *ſ.* 11.

ix. General penalty on officers not doing their duty.

Penalty on the surveyor.

If any surveyor shall knowingly, through favour or malice, under-rate or over-rate, or omit to charge any person liable, or shall be guilty of any corrupt or illegal practice in the execution of his office; he shall forfeit 100l. and his office. 20 *G.* 2. *c.* 3. *s.* 10.

On the assessor.

Assessor guilty of concealment or favour in assessing, shall forfeit not exceeding 5l. nor under 40 s. *Id. s.* 6.

On the collector.

Collector gathering by a rate not signed and allowed by the commissioners; or receiving rates from persons not charged therewith; or collecting from any person more than he is charged, and not paying the whole sum collected; or fraudulently altering any rate after being signed by the commissioners, shall forfeit 20l. *Id. s.* 36. by distress. *s.* 28.

In the case of *Q.* against *Buck* and *Hale*, *M.* 3 *An.* The defendants were indicted and found guilty of a misdemeanor, for that being assessors and collectors of the publick taxes of such a parish, they assessed some too high, and omitted others in their books, and yet levied the money on them, and put it into their own pockets. On their coming to receive judgment, it was moved, that no corporal punishment might be inflicted, because the crime was not of an infamous nature. But they were adjudged to the pillory in the county where the crime was committed; and that the marshal should carry them down, and a writ should go to the sheriff to assist him in the execution. 6 *Mod.* 306.

On others.

Generally; if any assessor, collector, or other person appointed by the commissioners, shall wilfully neglect or refuse to perform his duty, three commissioners may fine him not exceeding 20l. nor under 5l.; to be levied by distress, and charged amongst the rates to the receiver general. *Id. s.* 21.

General method of levying the penalties.

And the penalties and forfeitures, for which no other way of levying is prescribed, shall be levied by warrant of three commissioners by distress, rendering the overplus, after deducting reasonable charges for distraining. *Id. s.* 28.

Indemnity of officers.

Persons sued for any thing done in execution hereof, may plead the general issue, and have treble costs. 20 *G.* 2. *c.* 3. *s.* 66. 21 *G.* 2. *c.* 10. *s.* 20.

III. Duty

III. Duty on houſes of 5 l. a year and upwards.

By 38 *G.* 3. *c.* 40. after 5th *April* 1798 all the duties granted by 19 *G.* 3. *c.* 59. on inhabited houſes, and the additional duties on the amount thereof, are repealed, and the following duties impoſed in lieu thereof: Former duties repealed.

For every *inhabited houſe* which, with the *houſehold and other offices*, *yards*, and *gardens* therewith occupied, are or ſhall be worth the rent by the year, New duties.

Of 5 l. and under 20 l. —— 0 s. 8 d. in the pound.
— 20 l. ditto 40 l. —— 1 s. 0 d. ditto.
— 40 l. and upwards —— 1 s. 3 d. ditto.

Which ſaid duties ſhall be charged on the occupier of ſuch houſe, and to be ſubject to all the exemptions contained in any act in force for granting the duties on inhabited houſes hereby repealed, but to no other or further exemptions whatever. *ſ.* 1, 2. and *Sched.* B.

Worth the rent by the year] It has been determined upon ſeveral appeals to the judges, that the *annual value* of the houſes, gardens, and offices, is to be the rule for making the aſſeſſment, and not the rent mentioned in the leaſe.

But no duty ſhall be charged for any dwelling houſe, cottage, or tenement, whereof the occupier, by reaſon of his *poverty* only, is exempted to the payment from church and poor. 18 *G.* 3. *c.* 26. *ſ.* 6. Poor exempted.

Alſo no hoſpital or houſe for the reception and relief of poor perſons ſhall be liable. *ſ.* 35. Hoſpitals.

No hoſpital] In the caſe of *Greenwich* hoſpital, *Feb.* 1779, it was determined by the judges, that the officers' houſes, although ſeparate from the parts occupied by the penſioners, and appropriated ſolely to the officers and their families, were not liable.

But in the caſe of *Sutton*'s hoſpital, *Feb.* 1781, the commiſſioners were of opinion, that the reſpective houſes of the officers which were within the bounds, and had a communication with the hoſpital, were ſubject to the duty; and the judges were of opinion their determination was right.

And alſo in the caſe of the reverend *T. Loudham*, brother or confrator of *Wigſtones* hoſpital in *Leiceſter*, it was determined that he was liable to pay for the houſe he occupied in the ſaid hoſpital. 22d *May* 1780.

Colleges, &c.

Each chamber or apartment in any *college* or *hall* in the universities, or in the *inns of court* or *chancery*, shall pay as if it were an entire house. 18 *G.* 3. *c.* 26. *s.* 26, 27.

Public halls and offices.

Also every *hall* and *office* belonging to any person, or to any body politick or corporate, chargeable with any other taxes or parish rates, shall be subject to these duties, and the person or body politick or corporate to whom the same belongs, shall be charged as the occupier. 19 *G.* 3. *c.* 59. *s.* 13.

Taverns and alehouses.

Several cases have been determined on references to the judges, concerning *taverns*, *alehouses*, *coffee houses*, and the like, that they are liable to pay according to the improved rent at the time, and not at what they might be worth, considered as private houses, without the advantage of their trade or business.

Stables and coach-houses occupied with inns, not liable.

Case of Mr. *Archer* and others innkeepers at *Brentwood* in *Essex*. These people keep large inns, and were surcharged by the surveyor for their *stables* and *coach houses*, together with their dwelling houses which they occupied for carrying on their business. But the commissioners were of opinion that an innkeeper is a trade, occupation, or calling within the letter and spirit of the act, and that stables and coach houses are requisite for carrying on such trade, and not liable to the duty; and the judges were of opinion their determination was right. 11 *Feb.* 1779.

Farm houses.

But no *farm house* shall be rated. By which farm house is meant any house *bona fide* used or occupied for the purpose of husbandry only. Provided, that no such farm house which shall be occupied by the owner thereof, shall be entitled to exemption, which shall be valued at more than 10*l.* a-year distinct from the land therewith occupied. 18 *G.* 3. *c.* 26. *s.* 32, 3, 4.

Farm house] There has been a number of cases which have come before the judges to determine what shall be deemed a *farm house* within the meaning of this act; from which it seemeth, that in order to be exempted from the tax, such houses must be occupied merely for the purpose of husbandry, and not gentlemen's houses which are occupied for other purposes than husbandry only, notwithstanding there may be barns and cowhouses thereon, and lands occupied therewith, and are used in some respects as farm houses.

In the case of *John Bird*, who appealed against an assessment of 8*l.* a-year for his dwelling house, alleging that he is not the owner, and that it is a *farm house*, and therefore

fore exempted; but it appearing that although the houſe is uſed as a farm houſe, yet there is occupied therewith a tan-yard adjoining part of the premiſes, divided from the dwelling houſe by the farm yard. The commiſſioners affirmed the rate; and the judges were of opinion they were right.

And in the caſe of *W. Bowry* of *Mile-end Old Town*, *Middleſex*, cowfarmer, it was determined, that a houſe of 30l. a-year, which is uſed and occupied for the purpoſe of huſbandry only, by a perſon being the *tenant* only, and not the owner thereof, is not liable to the duty. 21 *June* 1780.

Upon the appeal of ſeveral perſons, the circumſtances appeared on the oath of the parties, that the houſes in which they lived are houſes belonging to their ſeveral farms, which are *their own property*; that they occupy the ſaid houſes for the purpoſes of huſbandry only, and that the ſaid dwelling houſes, offices, courtilages, and gardens ſeverally, are not worth more than 10l. a-year each diſtinct from the land. The commiſſioners diſcharged them; and the judges were of opinion they were right.

And in the caſe of Mr. *Fitzherbut* occupier of a farm, lands, tithes, &c. of 500l. a-year, upon which farm has been lately built a large commodious houſe, for which he was aſſeſſed 18s. 9d. he appealed, alleging, that the ſaid houſe is built inſtead of one which was old and ruinous, and that there is no other farm houſe on the farm; but it appearing to the commiſſioners that ſuch houſe is uſed and occupied *for other purpoſes than huſbandry only*, confirmed the aſſeſſment; and the judges were of opinion they were right.

Parſonage houſes.

It has been determined upon ſeveral appeals to the judges, that *parſonage houſes* wherewith the glebe land is occupied, are not exempt from the duty as farm houſes.

School houſes.

Alſo it hath been determined that a *ſchoolmaſter* who reſides in apartments appropriated for that purpoſe within the ſchool houſe, ſhall be liable to be aſſeſſed for ſuch part as he occupies.

Attorney's office.

Mr. *Shaw* is an attorney, and keeps his office apart from his dwelling houſe, but under one of his offices is a brewhouſe. The commiſſioners thought that the above premiſes were not aſſeſſable; but the judges determined they were wrong.

Shops and warehouſes.

Shops and *warehouſes* which are attached to the dwelling houſe, or have any communication therewith, (except thoſe of wharfingers,) ſhall be liable to the ſaid duties, to-

gether with such dwelling-house. But a *warehouse* being a distinct and separate building, and no part of such dwelling house or shop, but employed solely for the purpose of lodging goods, wares, and merchandize, or for carrying on some manufacture, (although the same may adjoin to or have some internal communication with such dwelling house,) shall not be chargeable. 19 *G.* 3. *c.* 59. *s.* 9, 10.

Warehouses] There hath been a number of cases referred to the judges to determine what warehouses shall be considered liable to the aforesaid duty, in which cases generally the situation of each building is particularly set forth, and also frequently a plan thereof; from which it seemeth in general to be determined, that such warehouses as are *under*, or *within* any part of a dwelling house, are deemed liable; but such as are not within, or a part of a dwelling house, but distinct and separate buildings, altho' adjoining thereto, are not chargeable.

Mill house.

Mr. *Goodeve*, occupier of a dwelling house and *mill house* adjoining thereto, with a communication by a door out of the dwelling house into the mill house, appealed against an assessment made upon him for the mill house, alleging, that it was used only as a place for trade, and not in any manner as a dwelling house. The commissioners disallowed his appeal; but the judges were of opinion they were wrong.

Coach houses and stables.

Coach house and stable] *S. Collet*, esq. appealed against a surcharge of a coach house and stable, alleging that they are at 400 yards distance from his dwelling house, and are leasehold under the corporation of *Worcester*; and that his dwelling house is freehold; and that they could not be considered as *belonging to and occupied with* his dwelling house. The commissioners allowed his appeal; and the judges were of opinion their determination was right. 30th *Jan.* 1784.

Mr. *Fothergill* of *Bedford-row* appealed against an assessment upon his *coach house* and *stables* behind his dwelling house, and belonging thereto, but which he let out to another person at 13*l.* a-year. The commissioners allowed his appeal; and the judges were of opinion they were right.

What houses shall be deemed inhabited.

But no dwelling house shall be deemed *inhabited* in which a servant or other person only resides to take care thereof; but if the inhabitant pays rent for the same, the house shall be deemed inhabited for the purposes of these acts. 18 *G.* 3. *c.* 26. *s.* 38. 19 *G.* 3. *c.* 59. *s.* 11.

Dwelling-

Dwelling-house inhabited] Mrs. *Jefferson*'s case. She appealed against an assessment of 30l, a-year made on her dwelling house, garden, &c *Rolvendon* in *Kent*, as not rateable at all to the house duty, because she does not make it her usual place of residence, and seldom comes there more than once a-year, and then only for 4 or 5 days at most. A man and woman live in the house in the capacity of gardener and housekeeper, to whom she pays annual wages. The house is furnished in the same manner as when inhabited by the lady who left it to Mrs. *Jefferson*. The commissioners discharged her from the said duty; but the judges were of opinion their determination was wrong. 16 *Dec.* 1780.

Where any house shall be divided into different stories, tenements, lands, or landings, and shall be inhabited by two or more persons or families, the same shall pay as if inhabited by one person or family only; and the landlord or owner shall be deemed the occupier, and charged accordingly. 18 *G.* 3. *c.* 26. *s.* 25. 19 *G.* 3. *c.* 59. *s.* 12. Houses divided.

House divided] *John Scotson*, the owner of an ancient mansion house called *Old Hall* at *Colton* in *Lancashire*, which house he divided into six distinct dwellings; four of these are small and have separate out doors; one of the others consists of a room below with a small buttery, and two rooms and garrets above, which are occupied by the owner; the other consists of a room and closet below, and two rooms above, and is occupied by his son-in-law; each of which dwellings has an out door, but there is only one pair of stairs which serves both. The assessors valued this house altogether at 5l. a-year, which rate the commissioners confirmed; and the judges were of opinion their determination was right. 20th *July* 1781.

Miss *Bolton* inhabits a house in *Preston*, and lets off the ground floor of the front as a shop, and though the said shop is under the same roof with the house, yet it has no communication therewith. The commissioners thought the same not assessable; but the judges determined they were wrong.

Mr. *Burnthwaite* rented a house in *Surrey-street* in the *Strand* at 45l. a-year rent, and also paid 9l. a-year land tax, for which he was assessed at 54l. a-year to the house duty; to which he appealed, thinking he ought not to be charged for the 9l. a-year he paid to the land tax; and the commissioners being of the same opinion allowed his appeal; but the judges were of opinion their determination was wrong. 11th *Feb.* 1779. Land tax.

Mr.

Ground rents.

Mr. *Coombe* of *Arundel-ſtreet* in the *Strand* appealed on account of his houſe being rated at 60l. a-year. It appeared that he paid 60l. a-year for the ſaid houſe, but that the ground on which it ſtands pays a ground rent of 16l. a-year, which he claimed to be deducted, and which the commiſſioners allowed, and reduced the rate to 44l.; but the judges were of opinion their determination was wrong. 11th *Feb.* 1779.

Repairs and taxes.

At the appeal day for *Allerdale* ward above *Darwent* in *Cumberland*, the commiſſioners allowed ſeveral appellants 3s. in the pound out of the yearly value of their houſes, for yearly *repairs* thereof, and alſo the *taxes*, which reduced above one hundred of the appellants' houſes under 5l. a-year value; but the judges were of opinion the determination of the commiſſioners was wrong. 18th *Nov.* 1779.

And upon ſeveral appeals the commiſſioners allowed, that one fifth of the rent of each houſe ſhould be taken off for taxes and repairs; but the judges were of opinion they were wrong.

Where the commiſſioners fix the value it is concluſive.

G. H. Naſh, eſq. being in poſſeſſion of a meſſuage, farm, and lands called *Rectory of Reigate*, for which he was aſſeſſed 10l. a year, and by the ſurcharge 25l. a-year, whereupon the commiſſioners determined, that he be aſſeſſed at 15l. a-year only. The judges were of opinion that the determination of the commiſſioners in this caſe is concluſive.

Sir *R. Clayton*, bart. was aſſeſſed at 10l. a-year, and ſurcharged at 45l. a-year, upon his oath ſaith, that he believes no one would give 10l. a-year for his houſe and houſehold offices diſtinct from the land. The commiſſioners determined that the ſurcharge ſhould be taken off, and the houſe charged at 10l. a-year according to the aſſeſſment. The ſurveyor was diſſatisfied, thinking that ſo large a houſe muſt be worth more than 10l. a-year. The judges were of opinion that in this caſe the determination of the commiſſioners is concluſive.

There were ſeveral other ſimilar caſes, in all which the judges gave the ſame opinion.

How to be levied.

The aforeſaid duties are to be aſſeſſed annually, to commence from the 5th day of *April* in each year, and to be levied by perſons appointed by the ſame authority, and with ſuch allowances, and under ſuch penalties, forfeitures, and diſabilities, and according to ſuch rules, methods, and directions, as are appointed by the ſeveral acts of parliament

for

for levying the duties upon houſes and windows. 18 *G.* 3. *c.* 26. *ſ.* 7. 38 *G.* 3. *c.* 40. *ſ.* 17.

First meeting of the commiſſioners.

And the commiſſioners ſhall meet yearly at ſuch times as they ſhall think proper before the 30th *April*. Provided that if by any neglect there ſhall not have been a meeting of the commiſſioners, and a due execution of the ſeveral powers hereby created, within the time, according to the manner or circumſtances directed by theſe acts; any two commiſſioners may meet and execute the ſaid powers at any other time, ſo as that the duties may be levied and paid. 18 *G.* 3. *c.* 26. *ſ.* 10, 11.

Commiſſioner's oath.

And no commiſſioner ſhall act until he hath taken (beſides the oaths required to be taken by any other acts) the following oath:

I A. B. *do ſwear, that I will truly and faithfully execute the office of a commiſſioner, and will determine upon all appeals which ſhall be brought before me according to the beſt of my ſkill and judgment, purſuant to the acts of parliament in that behalf.* So help me God.

And if he ſhall act before he hath taken ſuch oath, in the execution of the ſaid acts, he ſhall forfeit 200 l. half to the king, and half to him that ſhall ſue. 19 *G.* 3. *c.* 59. *ſ.* 14, 15.

Precepts to return aſſeſſors.

And the commiſſioners in their precepts for appointing aſſeſſors for the window duties, ſhall give notice that ſuch perſons are alſo appointed aſſeſſors of inhabited dwelling houſes and ſhops. 18 *G.* 3. *c.* 26. *ſ.* 12.

Oath to be taken by aſſeſſors and ſurveyors.

And every aſſeſſor, ſurveyor, or inſpector, before he acts, ſhall take the following oath before two commiſſioners: *I* A. B. *do ſwear, that in the aſſeſſment which I ſhall make of the houſes and houſehold offices, and ſhops, within the diſtrict or pariſh for which I am appointed an aſſeſſor, I will rate each at the true annual value according to the beſt of my judgment and ſkill, and that I will truly and faithfully execute the truſts repoſed in me by virtue of the ſeveral acts of parliament for that purpoſe.* So help me God.——And if any perſon ſhall act before he hath taken ſuch oath, he ſhall forfeit 20 l. 18 *G.* 3. *c.* 26. *ſ.* 15, 16.

Manner of laying the aſſeſſment.

And the aſſeſſors ſhall yearly, before *June* 24, eſtimate and aſcertain, according to the beſt of their judgment, the full and juſt yearly rent at which every dwelling houſe with the houſehold offices therewith occupied, are worth to be let; and ſhall make an aſſeſſment upon the occupiers

piers thereof of the duties hereby impoſed, according to the rates aforeſaid: and ſhall, in writing under their hands, certify the number of houſes, together with the rents ſo aſcertained as aforeſaid, and the names of the occupiers, and the ſeveral ſums charged on them in reſpect of the ſame; and ſhall, on or before the 24th day of *June* yearly, deliver ſuch aſſeſſment, ſo made by them, to the ſaid commiſſioners or any two of them. 18 *G.* 3. *c.* 26. *ſ.* 17.

Aſſeſſors neglecting the ſurveyor to aſſeſs.

If the commiſſioners ſhall at any time neglect to appoint aſſeſſors, or if the aſſeſſors by them appointed ſhall neglect to perform what is required of them; the ſurveyor or inſpector may perform ſuch and the like ſervices as are required from the aſſeſſors. 19 *G.* 3. *c.* 59. *ſ.* 6.

Pariſh books may be inſpected.

And the commiſſioners, or any two of them, the ſurveyors, inſpectors, aſſeſſors, or any perſon authoriſed by any of them, ſhall have liberty to inſpect and take copies of or extracts from any books kept by any pariſh officer or other, concerning the rates payable to the poor, or any other publick taxes; and if any perſon ſhall refuſe ſuch inſpection, or to attend the ſaid commiſſioners with their books when required, he ſhall forfeit 40 s. 18 *G.* 3. *c.* 26. *ſ.* 30.

Houſes to be charged as aſſeſſed to public taxes.

And no houſe ſhall be eſtimated at any leſs value yearly than that at which the ſame ſtands legally rated to the publick rates, taxes, and aſſeſſments, where ſuch premiſes are charged by a pound rate, and according to the full annual value thereof. *ſ.* 31.

Not to be charged to the poor rates, or highway duty.

Provided, that no occupier of any dwelling houſe ſhall be charged to the poor rate or highway duty, for or in reſpect of any duties impoſed by theſe acts; but they ſhall continue to be rated to the ſame, in ſuch manner as they were rated at the time of paſſing the ſaid acts. *ſ.* 36.

Surveyor's ſurcharge.

The ſurveyor may examine the aſſeſſments, and if he ſhall find on his ſurvey that any houſe has been omitted, or under-rated, he ſhall certify the ſame in writing under his hand by way of ſurcharge, to two commiſſioners, at the ſame time he makes his ſurcharge for the window duty. And if the ſurveyor ſhall omit to make a ſurcharge for the firſt half year, he may make a ſurcharge for the whole year. *ſ.* 23, 24.

Signing the aſſeſſment.

And the ſaid commiſſioners or any three of them ſhall ſet their hands to the ſaid aſſeſſments, and to ſuch ſurcharge as may have been made thereto, teſtifying their allowance of the ſame; and ſhall appoint two of the perſons

ſons named in ſuch aſſeſſment to be collectors, or any other two ſuch perſons as they ſhall think able and reſponſible; and ſhall forthwith deliver ſuch aſſeſſment to the ſaid collectors, who are required to collect the ſaid duties ſo aſſeſſed, and to give acquittances for the ſame; and for the payment thereof to the receiver general, the pariſh or place for which they are ſo appointed, ſhall be anſwerable. *ſ.* 18. 20.

Appointing collectors.

In all privileged and other places being extraparochial, and not within the conſtablewicks and precincts of the reſpective aſſeſſors, the commiſſioners ſhall appoint two perſons near to the ſaid place to be aſſeſſors, and two collectors in like manner. *ſ.* 19.

Extraparochial places.

All perſons thinking themſelves over-rated, may appeal to three commiſſioners on the days, and in the manner directed with reſpect to the window duties, giving ten days' notice to the aſſeſſor and ſurveyor, who ſhall have liberty to be preſent at hearing ſuch appeals: But the commiſſioners ſhall not make any abatement, unleſs it ſhall appear upon oath, that ſuch perſon was over-rated. And all appeals once determined ſhall be final: ſubject nevertheleſs to an appeal to the judges, in the ſame manner as for the window duties. *ſ.* 39, 40, 1, 2.

Appeal againſt the aſſeſſment.

Where any perſon charged with the houſe duty, ſhall be under the age of 21 years, their parents, guardians, or tutors ſhall pay, and be allowed the ſame in their accounts. 18 *G.* 3. *c.* 26. *ſ.* 28.

Guardians liable for infants.

Provided, that the payment by any perſon of theſe duties in any pariſh or place, ſhall not gain ſuch perſon a ſettlement therein, by reaſon of any ſuch payment. *ſ.* 37.

Not to gain ſettlements.

And the commiſſioners ſhall cauſe duplicates of the aſſeſſments to be made out and tranſmitted, in like manner as of the window duties; in which ſhall be inſerted, as well the number of houſes, as the amount of the duties charged thereon. *ſ.* 21, 22.

Duplicates.

And all powers, authorities, rules, directions, penalties, and forfeitures, clauſes, matters, and things directed by any act of parliament for raiſing the duties on houſes, windows, and lights, ſhall be in full force, and duly obſerved in the execution of this act. 18 *G.* 3. *c.* 26. *ſ.* 7. 38 *G.* 3. *c.* 40. *ſ.* 17.

Penalties.

And all conſtables and other his majeſty's officers, ſhall be aiding and aſſiſting in the execution of this act, and obey and execute ſuch precepts, or warrants, as ſhall be to them

Conſtables, &c. to obey the commiſſioners.

them directed in that behalf by any three of the said commissioners. *s.* 44.

A. Precept to the high constables to return assessors.

Westmorland. { To *Henry Holme*, gentleman, high constable of the West Ward, within the said county.

WE the commissioners of the duties upon houses and windows, for the said county, whose names are hereunto set, and seals affixed, do hereby require you forthwith upon the receipt hereof, to issue out your warrants to all the petty constables within your said ward, according to the form hereupon indorsed. Given under our hands and seals the —— day of ——— in the ——— year ———.

The form of the said warrant to be indorsed.

Westmorland, West Ward. } To the constable of ——

BY virtue of a precept from the commissioners of the duties upon houses and windows for the said county to me directed, you are hereby required forthwith to give notice to the last collectors of the said duties within your constablewick, that they and every of them do personally appear before the said commissioners at ——— on ——— the —— day of ——— at the hour of ——— in the forenoon of the same day, in order to be appointed assessors of the said duties for this present year, and at the same time to take the oaths in that behalf required, and to receive their appointment and charge how and in what manner to make their assessments, and otherwise how to proceed in the execution of their said office. And be you then there to certify what you shall have done in the execution hereof. Given under my hand the —— day of —— in the year of our Lord ——.

Henry Holme, *high constable.*

B. *Appointment of assessors for the window duties, and other duties directed by several acts of parliament to be assessed by such assessors.*

Westmorland. *WE the commissioners of the duties upon houses and windows for the said county, whose names are hereunto set, and seals affixed, do hereby nominate and appoint* ——— *to be assessors of the duties hereafter mentioned, within the township of* ——— *in the county aforesaid. And we do hereby require you the said assessors to make an assessment upon houses, windows, and lights, and also upon all inhabited houses worth the yearly value of* 5*l. or upwards, including in such value, all household and other offices, yards, and gardens therewith occupied; and also upon all masters and mistresses of male servants; and upon the owners of carriages, and horses within your township, liable to any of the duties aforesaid, according to the forms and directions herewith delivered to you* (a), *and as directed by several acts of parliament for that purpose, and sign the same; and deliver the same to us at* —— *in the county aforesaid, on* —— *the* —— *day of* ——— *at the hour of* —— *in the forenoon of the same day. At which time and place you are also hereby required to return unto us the names of two or more able and sufficient inhabitants within your said township, to be collectors of the said assessment; and in the mean time to give notice unto them that they do also then and there appear to receive their appointment, nomination, and charge. Given under our hands and seals the* —— *day of* ——— *in the year of our Lord* ——.

C. Appointment and charge of the collectors, with warrant to collect.

Westmorland. *WE the commissioners of the duties upon houses and windows for the said county, whose names are hereunto set, and seals affixed, do here-*

(a) N. B. Printed forms of the assessments are sent down yearly to the window surveyors, whereby to make the assessments, and which are to be distributed to the assessor of each respective township.

by

by nominate and appoint —— to be collectors of the said duties, and all other duties directed by several acts of parliament to be collected by the collectors of the window duties, for the township of —— in the said county, for this present year, and do hereby impower them to demand, collect, and receive the same. And you the said collectors are hereby required, within ten days after your receipt hereof, to cause public notice to be given in the church or chapel immediately after divine service on the Lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessments for the said duties, which shall be made between the 25th day of March, *and the 20th day of* Aug. *yearly, will be heard and determined at —— on the —— day of ——* [to be between 20th *Aug.* and 15th *Sep.*] *and such other appeals as shall be made between the 29th of* Sep, *and the 20th of* Jan. *yearly, will be heard and determined at —— on the —— day of ——* [to be between 20th *Jan.* and 12th *Feb.*] *by the said commissioners. And if any person shall neglect or refuse to pay the same unto you upon demand, you are hereby required forthwith to give notice unto us thereof, that such further proceeding may be had therein, as to law doth appertain. And the same when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to say, —— deducting out of the last payment thereof* 3d. *for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and seals the —— day of —— in the year of our Lord ——.*

House of correction.

Building or repairing houses of correction.

BY the 7 *J. c.* 4. it was enacted, that before *Michaelmas* 1611, there should be built or provided within every county one or more fit and convenient houses of correction, with convenient backside thereunto adjoining, together with mills, turns, cards, and such like necessary implements, to set rogues, vagabonds, or other idle, vagrant, and disorderly persons on work; which houses were to be purchased, conveyed, or assured unto such persons, as by the justices in sessions should be directed, upon trust, that the same should be employed for the keeping, correcting and setting to work the said rogues,

rogues, vagabonds, or ſturdy beggars, and other idle and diſorderly perſons. *ſ.* 2.

On preſentment of a jury.

And by the 17 *G.* 2. *c.* 5. On preſentment of the grand jury, at the aſſizes, great ſeſſions, or general gaol delivery, held for any county or liberty (or at the general ſeſſions, or general quarter ſeſſions of the peace, where there ſhall be no aſſizes, great ſeſſions, or general gaol delivery held, 14 *G.* 2. *c.* 33. *ſ.* 2.) that there is no houſe of correction, and that it will be neceſſary to provide one or more; or that the houſes of correction already provided are not ſufficient or convenient, or want to be enlarged; the juſtices in ſeſſions ſhall have power to build or enlarge one or more fit houſes of correction, or to buy or hire houſes for that purpoſe, with convenient backſides or outlets thereto adjoining, or to purchaſe land, and to erect ſuch houſe or houſes upon part thereof, and to lay out the reſt of ſuch lands for ſuch backſides or outlets; and to conclude and agree upon raiſing ſuch ſums of money, as on examination of able and ſufficient workmen, or others, ſhall appear to be neceſſary for that purpoſe: And if houſes or lands are to be purchaſed, they ſhall be conveyed to ſuch perſons as the ſaid juſtices in ſeſſions ſhall direct, in truſt and for the uſes and purpoſes aforeſaid. *ſ.* 30.

Or by preſentment of a juſtice.

And by the 22 *G.* 3. *c.* 64. The want of houſes of correction, or the inſufficiency thereof, may be preſented by a juſtice on his own view or knowledge, as well as by the grand jury; which preſentment ſhall be proceeded upon in the ſame manner as if it had been made by the grand jury. *ſ.* 6.

Viſitors and inſpectors to be appointed.

And the juſtices at their quarter ſeſſions ſhall nominate one or more juſtices within their reſpective diſtricts, to examine the houſes of correction within their reſpective juriſdictions, who ſhall inſpect the ſtate and condition thereof, and what additions or alterations may be neceſſary, having regard to the claſſing the ſeveral perſons who ſhall be kept there according to the nature of their crimes, and for providing proper places for the employment of ſuch perſons who are committed to hard labour, and alſo to keeping the priſon clean and wholeſome; and may employ proper perſons to make plans and eſtimates of new buildings, additions, or alterations which may be thought neceſſary; and ſhall make a report thereof to the juſtices at the next quarter ſeſſions, who ſhall conſider the ſame, and make ſuch orders, and enter into ſuch contracts relating thereto, as they ſhall think fit. 22 *G.* 3. *c.* 64. *ſ.* 1. 24 *G.* 3. *ſeſſ.* 2. *c.* 55. *ſ.* 1.

Two justices, within the respective hundreds, divisions, or jurisdictions, where there shall be any house of correction, or any two justices appointed by the sessions, shall visit the same twice a-year, or oftener if need be, and report the state thereof to the next sessions. 17 *G.* 2. *c.* 5. *s.* 31.

Fitting up the house.

And the justices in sessions shall take care, that the houses of correction (except those erected or maintained by particular founders) shall be duly fitted up and supplied with implements, materials, and furniture for keeping, relieving, employing, and correcting all idle and disorderly persons, rogues, vagabonds, incorrigible rogues, and others, who shall be sent to, confined, or continued in the same; and shall make such orders and regulations as they shall think fit, for the better governing and regulating the said houses, and for employing, relieving, and punishing the persons therein, or for sending them to or from thence. *s.* 31.

And by 22 *G.* 3. *c.* 64. as soon as such house is completed, the justices in sessions shall order the same to be fitted up and furnished with such mills, looms, utensils and implements, as they shall judge proper, and shall provide materials for manufactures for the employment of persons committed to hard labour; and may appoint a temporary assistant to instruct such prisoners in any business or branch of manufacture which they shall think proper. *s.* 3.

Assistant may be appointed.

Appointing the master.

And the justices in sessions shall appoint at their will and pleasure fit persons (women excepted) to be governors or masters of such houses so to be provided. 7 *J.* *c.* 4. *s.* 4. 17 *G.* 2. *c.* 5. *s.* 31. 22 *G.* 3. *c.* 64. *s.* 10.

His salary.

And for the said master or governor's travel and care to be had in the said service, and for the relieving of such as shall be weak and sick in his custody, the justices in sessions shall appoint such sums yearly as they shall think meet to be paid quarterly beforehand by the treasurer (the said master or governor giving sufficient security for the continuance and performance of the said service). 7 *J.* *c.* 4. *s.* 6. 17 *G.* 2. *c.* 5. *s.* 33.

They may also allow him some proportion of the profits earned by the prisoners. 22 *G.* 3. *c.* 64. *s.* 9.

Governor and other officers to be appointed.

And by 31 *G.* 3. *c.* 46. The justices at any general or quarter sessions, or special adjournment thereof held for that express purpose, of which sessions or adjournment publick notice shall be given in some newspaper circulating in such county, signed by the clerk of the peace, and at which five justices at the least shall be present; shall

appoint a governor or taſkmaſter, and ſuch other officers for every place of confinment uſed as a houſe of correction or penitentiary houſe; and may allow them ſuch ſalaries as they ſhall deem neceſſary, and may order the ſame to be paid out of the county rate; and may at any time remove ſuch governor and other officers, and appoint others in their ſtead, and increaſe or diminiſh their number excluſive of the governor, and alter their ſalaries, as they ſhall find convenient. And in fixing the ſalary of ſuch governor or taſkmaſter, the juſtices ſhall have regard as far as may be, to making the emoluments of his office depend on the quantity of work done, that it may become his intereſt as well as duty to ſee that all perſons under his cuſtody be regularly and profitably employed. And ſuch governor and other officers ſhall give ſuch ſecurity for the performance of their duty, and to ſuch perſon as ſuch ſeſſions ſhall appoint; and for any negligence or miſbehaviour may be proceeded againſt, either on ſuch ſecurity, or by fine at ſuch ſeſſions, in the ſame manner as any governor of any houſe of correction is fineable by 7 *J.* 1. *c.* 4. or 17 *G.* 2. *c.* 5. *ſ.* 1.

And to give ſecurity.

And if any ſuch governor being removed by any order of ſeſſions, ſhall refuſe or neglect to quit the poſſeſſion of ſuch houſe for 48 hours next after notice given to him in writing by the clerk of the peace: any 2 juſtices on proof of ſuch order of removal, notice, and neglect, or refuſal to comply with the ſame, may, by warrant, direct the ſheriff to remove ſuch governor out of ſuch houſe, who ſhall accordingly clear the poſſeſſion thereof, in-like manner as upon a writ of *habere facias poſſeſſionem*. *Id.*

Governor may be compelled to quit poſſeſſion.

And the juſtices at ſome general or quarter ſeſſions or adjournment thereof as aforeſaid, at which 5 juſtices at the leaſt ſhall be preſent, may make ſuch rules and orders for receiving, ſeparating, claſſing, dieting, cloathing, maintaining, employing, reforming, governing, managing, treating, and watching offenders during their confinement in the ſaid penitentiary houſes; and alſo for adjuſting what aid ſhall be given to them, as well during ſuch confinement as on their being releaſed, as to them ſhall ſeem meet; but to have regard to the diſcipline, proviſions and directions of the 19 *G.* 3. *c.* 47. (*a*). But ſuch rules and orders ſo to be made ſhall not begin to have force until they have been ſubmitted to the judges of aſſize, and a

Seſſions to make rules and orders, &c.

(*a*) See tit. Tranſportation.

certificate or declaration ſhall have been ſubſcribed by them, that they do not ſee any thing contrary to the law therein. And all ſuch rules and orders may at any time afterwards be added to or altered, ſubject to the ſame rules and regulations as aforeſaid. 31 *G.* 3. *c.* 46. *ſ.* 2.

But nothing herein ſhall extend to deprive any convict of any allowance made by law, provided only that the application thereof ſhall be ſubject to the rules herein directed. *Id.*

Powers and duty of governors.

And ſuch governor and his aſſiſtant ſhall have the ſame power over offenders under confinement, as are incident to the office of a ſheriff or gaoler, and in like manner ſhall be anſwerable for any eſcape; and ſuch governor ſhall have power to hear complaints and examine perſons touching offences, and to puniſh the ſame (except by whipping) in the ſame manner as the governors of the two penitentiary houſes directed to be built by the ſaid act of 19 *G.* 3. *c.* 74. And in caſe of the repetition of ſuch offences, or of offences more enormous, which ſuch governor is not by this act impowered to puniſh, he ſhall report the ſame to the viſiting juſtices, or one of them, who ſhall have power to inquire upon oath and determine all ſuch offences, and ſhall order ſuch offenders to be puniſhed, either by moderate whipping, repeated whippings, or cloſe confinement for any term not exceeding one month. *ſ.* 3.

Penalty on perſons eſcaping, or aſſiſting therein.

And if any perſon ordered to hard labour, ſhall break priſon, or eſcape from his place of confinement, or in the conveyance thereto, or from the perſon having him lawfully in cuſtody: Or if any perſon ſhall reſcue any offender who ſhall be ordered to hard labour, either during his conveyance to priſon, or whilſt in the cuſtody of the perſon under whoſe charge he ſhall be confined; or ſhall be aiding or aſſiſting therein: Or if any perſon having ſuch cuſtody as an aſſiſtant, ſhall voluntarily or negligently permit ſuch offender to eſcape: Or if any perſon ſhall by ſupplying arms, tools, inſtruments, or means of diſguiſe, or otherwiſe in any manner aid or aſſiſt any ſuch offender in any eſcape, or attempt to eſcape, though no eſcape be actually made; every ſuch offence ſhall be puniſhed in the ſame manner as the like offence would be puniſhable by the aforeſaid act of 19 *G.* 3. *c.* 74. concerning penitentiary houſes. *Id.*

Proviſions of 19 G. 3. reſpecting eſcapes, to extend to this act.

And all proviſions made by the ſaid act of 19 *G.* 3. *c.* 74. for carrying on proſecutions for eſcapes, attempts to eſcape, breaches of priſon, and reſcues from the ſaid penitentiary houſes, ſhall extend to this act. *ſ.* 4.

And for the better preventing abuſes in houſes of correction, the juſtices ſhall at every ſeſſions after the paſſing of this act, appoint 2 or more juſtices viſitors of every ſuch place of confinement, who ſhall, either together or ſingly, perſonally viſit and inſpect ſuch priſon at leaſt 3 times in each quarter of a year, and oftener if occaſion ſhall require; and ſhall examine into the ſtate of the buildings, the behaviour and conduct of the officers, and the treatment and condition of the priſoners, the amount of their earnings, and the expences attending ſuch priſon; and in matters of preſſing neceſſity and within the powers of their commiſſion as juſtices, ſhall take cognizance thereon, and proceed to regulate and redreſs the ſame; and at every ſeſſions, the ſaid viſiting juſtices reſpectively ſhall make a report in writing of the ſtate and condition of the ſame, and of all abuſes which may occur to their obſervation therein; and the chairman of ſuch ſeſſions ſhall call upon the ſaid viſitors for ſuch report. And any juſtice of his own accord, and without being appointed a viſitor, may enter into and examine the ſame at ſuch time, and as often as he ſhall think fit; and if he ſhall diſcover any abuſes therein, he ſhall report the ſame in writing to the next ſeſſions or adjournment; and when any abuſes ſhall be reported in manner aforeſaid, the ſame ſhall be taken into immediate conſideration, and ſuch effectual meaſures ſhall be adopted for inquiring into and rectifying the ſame, and as ſoon as the nature of the caſe will allow. *ſ.* 5.

Viſiting juſtices to be appointed.

Any other juſtices may examine houſes of correction, &c.

The juſtices ſhall take care, that ſeparate apartments be provided in the houſe of correction, for all perſons committed upon charges of felony, or convicted of any theft or larceny, and committed for puniſhment by hard labour, in order to prevent any communication between them and the other priſoners; and alſo proper apartments, covered or open, as ſhall be found moſt convenient for employing the ſeveral perſons who are to be kept to hard labour; and they are alſo to provide ſeparate apartments in each diviſion of the ſaid houſe of correction, for the women who ſhall be committed thither. 22 *G.* 3. *c.* 64. *ſ.* 1.

Priſoners to be kept ſeparate.

The ſaid maſter ſhall have power to ſet ſuch rogues, vagabonds, idle and diſorderly perſons, as ſhall be brought or ſent to the ſaid houſe, to work and labour (being able), for ſuch time as they ſhall continue therein, and to puniſh them by putting fetters or gives upon them, and by moderate whipping: And the ſaid rogues, vagabonds, and

Time and manner of puniſhment.

idle perſons, during ſuch time as they ſhall continue in the ſaid houſe, ſhall in no ſort be chargeable to the country for any allowance, either at their bringing in or going forth, or during their abode there; but ſhall have ſuch and ſo much allowance, as they ſhall deſerve by their own labour and work. 7 *J.* *c.* 4. *ſ.* 4.

But in caſe of putting handcuffs or fetters upon a priſoner, the governor ſhall give notice thereof to one of the viſiting juſtices, within forty-eight hours after the priſoner ſhall be ſo fettered: and he ſhall not continue ſuch fettering longer than ſix days without obtaining an order in writing from one of the viſiting juſtices. *ſ.* 11.

And whereas doubts may ariſe, where authority is given to any juſtice or juſtices, to commit offenders to the houſe of correction, for offences cognizable before them out of ſeſſions, how long offenders may be there detained, and in what manner treated, where the time and manner of their puniſhment is not by law expreſsly limited; it is enacted, that where any offender ſhall be committed as aforeſaid, by virtue of any law in being or to be made, and the time and manner of their puniſhment is not expreſsly limited, the ſaid juſtice or juſtices ſhall commit ſuch offenders to the houſe of correction, there to be kept to hard labour until the next general or quarter ſeſſions, or until diſcharged by due courſe of law: And two juſtices (of which the juſtice who committed him to be one) may diſcharge the ſaid offender before the ſeſſions, if they ſee cauſe; and if he ſhall not be ſo diſcharged, the ſaid ſeſſions may either diſcharge him, or continue him further not exceeding three months. 17 *G.* 2. *c.* 5. *ſ.* 32.

Priſoners in certain caſes to have half their earnings.

And by the 22 *G.* 3. *c.* 64. The governor or keeper of every houſe of correction ſhall employ all ſuch perſons as ſhall be priſoners therein, in ſome work or labour which is not ſevere, altho' ſuch priſoner was not, by the warrant of his commitment, ordered to be kept to labour; and ſhall enter a ſeparate account of the work done by every perſon under that deſcription, and account with and pay to him one half of the nett profits which he ſhall have earned, at the time of his diſcharge, and not before. *ſ.* 7.

Chaplain appointed.

The juſtices in ſeſſions may, if they think fit, appoint a miniſter of the church of England, reſiding near to the houſe of correction, to perform divine ſervice there every Sunday, and appoint him a ſalary not exceeding 20 l. a-year; but ſuch ſalary to be diminiſhed at any future ſeſſions, if the juſtices ſhall think fit. *ſ.* 12.

No

No governor, or perſon employed under him as aſſiſtant or otherwiſe, ſhall ſell, or be capable of being licenſed to ſell, or have any benefit from the ſale of any wine, ale, beer, ſpirituous or other liquors, or any other article or thing uſed in ſuch houſe, or by any perſon confined therein, during the time of ſuch employment; and every perſon offending therein ſhall, on conviction upon oath before one juſtice, forfeit 10l.; and ſhall be diſmiſſed from his employment as governor or aſſiſtant in ſuch houſe, by order of the juſtices at the next ſeſſions, on proof made before them of the ſaid offence. And no wine, ale, ſpirituous or other liquors ſhall be brought into the houſe of correction to be drank there, unleſs for a medical purpoſe, by a written direction, under the hand of the apothecary or ſurgeon uſually attending ſuch houſe. *ſ.* 8. Wine, ale, or ſpirituous liquors not to be drank there.

The ſaid penalty of 10l. to be levied by diſtreſs; for want of ſufficient diſtreſs, the offender to be committed to the common gaol or houſe of correction, for any time not exceeding ſix kalendar months, nor leſs than one. *ſ.* 13.

The juſtices at every general quarter ſeſſions, ſhall call upon the keeper of the houſe of correction, to produce to them in writing a liſt of the ſeveral perſons then in cuſtody, with a deſcription of the offence, the time for which committed, diſtinguiſhing particularly thoſe who by warrant of commitment are to be kept to hard labour, and alſo diſtinguiſhing the age and ſex of every ſuch perſon committed to hard labour, and in what trade or buſineſs he hath been employed, and what he hath been moſt accuſtomed to, and is beſt qualified for, and how he has behaved during his confinement. *ſ.* 3. Maſter to account to the ſeſſions.

If the maſter ſhall not, at every quarter ſeſſions, yield a true account of all ſuch perſons as have been committed to his cuſtody; or if any perſon committed to his cuſtody ſhall be troubleſome to the country, by going abroad; or otherwiſe ſhall eſcape away from the houſe of correction, before he ſhall be from thence lawfully delivered; the ſaid juſtices ſhall ſet down ſuch fines and penalties upon the ſaid maſter or governor, as they ſhall think fit: and all fines and penalties ſhall be paid to the treaſurer, and accounted for by him. 7 *J. c.* 4. *ſ.* 9. Maſter miſbehaving.

The juſtices in ſeſſions may remove the ſaid governor or maſter; and if any perſon removed by order of ſeſſions ſhall refuſe or neglect to quit poſſeſſion, for ten days after notice given him in writing by the clerk of the peace, any Removing the maſter.

two juſtices (on producing to them ſuch order of ſeſſions, or an atteſted copy thereof, and on oath of one witneſs of ſuch notice having been given, and of his having refuſed or neglected to quit poſſeſſion) may by their warrant direct the ſheriff to remove him, who ſhall thereupon clear the poſſeſſion as in caſe of a writ of *habere facias poſſeſſionem*. 17 *G.* 2. *c.* 5. *ſ.* 31.

Expences of building, repairing, and purchaſing land, &c. how to be paid.

And to defray the expences of erecting, purchaſing, hiring, enlarging, altering, and repairing houſes of correction, and of purchaſing land to erect them upon, and for backſides and outlets, and of fitting up and furniſhing ſuch houſes, and of ſending perſons to and from the ſame, and maintaining and employing them there, and other neceſſary charges, the juſtices in ſeſſions may cauſe the ſame to be raiſed in the ſame manner as the general county rate; and when the amount thereof ſhall exceed one half of the amount of the ordinary annual aſſeſſment for the ſame, (to be computed at a medium for the laſt five years preceding,) the juſtices in ſeſſions may, from time to time, borrow or mortgage of the ſaid rates, any ſum not leſs than 50 l. nor more than 100 l. each, as to them or the major part of them, ſuch major part not being leſs than five, ſhall appear neceſſary; and to ſecure the money ſo borrowed, by an order ſigned by the chairman and two juſtices preſent at the time of making ſuch order, which ſhall be an effectual ſecurity to the perſon lending the ſame; which ſecurity may from time to time be aſſigned by the perſon holding the ſame, by indorſing his name on the back thereof: And the ſaid juſtices may order the intereſt due upon ſuch ſecurities, and ſo much of the principal ſum as ſhall be equal at leaſt to the ſaid intereſt, to be paid off yearly, at a certain day to be fixed by ſuch juſtices, until the whole ſhall be diſcharged; and an account thereof ſhall be kept in a book to be provided by a perſon appointed for that purpoſe, which book ſhall be delivered into court at every quarter ſeſſions, and ſhall be inſpected by the juſtices, who ſhall make ſuch orders relating thereto as to them ſhall ſeem meet; and if it ſhall appear that the perſon ſo appointed, ſhall neglect or delay to apply the money in his hands to the purpoſes directed, he ſhall forfeit double the amount thereof. And ſuch ſecurities ſhall be firſt diſcharged as ſhall bear the higheſt intereſt: Provided that the whole money borrowed be fully paid within 14 years from the time of borrowing the ſame. 17 *G.* 2. *c.* 5. *ſ.* 33. 22 *G.* 3. *c.* 64. *ſ.* 5. 24 *G.* 3. *ſeſſ.* 2. *c.* 55. *ſ.* 2, 3, 4.

And

And the juſtices in ſeſſions may ſell the materials of any old houſe of correction, or the ſcite thereof, or any part thereof, which ſhall not be neceſſary for the building, repairing, or enlarging ſuch new houſe, and ſhall apply the money ariſing by ſuch ſale, to the purpoſes aforeſaid. 24 *G.* 3. *ſeſſ.* 2. *c.* 55. *ſ.* 5. Selling the old materials.

The following rules, orders, and regulations, for the better government of the perſons to be committed to the ſaid houſes of correction, ſhall be duly obſerved and inforced in every ſuch houſe, ſubject nevertheleſs to ſuch additions as ſhall from time to time be made by the juſtices at their *Midſummer* or *Michaelmas* ſeſſions, provided that ſuch additions ſhall not be contradictory to the rules, orders, and regulations here eſtabliſhed: And for the purpoſe of having them more generally known, and more ſtrictly attended to, the keeper ſhall cauſe the ſame to be printed in plain legible characters, and fixed in ſome conſpicuous part of every ſuch houſe of correction. 22 *G.* 3. *c.* 64. *ſ.* 4. Rules and orders eſtabliſhed.

" Rules, orders, and regulations to be obſerved and " inforced at every houſe of correction provided and eſta- " bliſhed, or to be provided and eſtabliſhed, under the " authority of the acts of the ſeventh year of the reign of " his late majeſty king *James* the firſt, the ſeventeenth of " king *George* the ſecond, and the twenty-ſecond of king " *George* the third.

" I. That the ſeveral perſons who ſhall be committed " to the houſe of correction to be kept to hard labour, " ſhall be employed (unleſs prevented by ill health) every " day, during their confinement, (except *Sundays*, *Chriſt-* " *mas-day*, and *Good Friday*,) for ſo many hours as the " day light in the different ſeaſons of the year will admit, " not exceeding twelve hours, being allowed thereout to " reſt half an hour at breakfaſt, an hour at dinner, and " half an hour at ſupper, and that the intervals ſhall be " noticed by the ringing of a bell.

" II. That the governor of each houſe of correction " ſhall adapt the various employments, which ſhall be " directed by the juſtices at their quarter ſeſſions, to each " perſon in ſuch manner as ſhall be beſt ſuited to his or " her ſtrength and ability, regard being had to age and " ſex.

" III. That the males and females ſhall be employed, " and ſhall alſo eat and be lodged in ſeparate apartments, " and ſhall have no intercourſe or communication with " each other.

" IV. That

"IV. That every perſon ſo committed ſhall be ſuſtained "with bread, and any coarſe but wholeſome food and wa- "ter; but perſons under the care of the phyſician, ſur- "geon, or apothecary, ſhall be ſuſtained with ſuch food "and liquor as he ſhall direct.

"V. That the governor, and ſuch other perſons (if "any) as ſhall be employed by the juſtices to aſſiſt the "governor, ſhall be very watchful and attentive in ſeeing "that the perſons ſo committed are conſtantly employed "during the hours of work; and if any perſon ſhall be "found remiſs or negligent in performing what is re- "quired to be done by ſuch perſon to the beſt of his or "her power and ability, or ſhall wilfully waſte, ſpoil, or "damage the goods committed to his or her care, the "governor ſhall puniſh every ſuch perſon in the manner "hereafter directed.

"VI. That if any perſon ſo committed ſhall refuſe to "obey the orders given by the governor, or ſhall be guilty "of profane curſing or ſwearing; or of any indecent "behaviour or expreſſion; or of any aſſault, quarrel, or "abuſive words, to or with any other perſon: he or ſhe "ſhall be puniſhed for the ſame in the manner hereafter "directed.

"VII. That the governor ſhall have power to puniſh "the ſeveral offenders for the offences herein-before de- "ſcribed, by cloſer confinement; and ſhall enter in a "book, to be kept by him for the inſpection of the juſ- "tices at the quarter ſeſſions, and the viſiting juſtice or "juſtices, the name of every perſon who ſhall be ſo pu- "niſhed by him, expreſſing the offence, and the duration "of the puniſhment inflicted."

Form of a commitment to the houſe of correction.

Weſtmorland. { *J. P.* eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, to the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

THESE are to command you the ſaid conſtable in his ſaid majeſty's name forthwith to convey and deliver into the cuſtody of the ſaid keeper of the ſaid houſe of correction the body of A. O, *being charged before me upon oath* [or, *convicted before*

fore me, or otherwiſe as the caſe ſhall be: And here ſet forth the offence.] *And you the ſaid keeper are hereby required to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep, until* —— [or, *for the ſpace of* —— And here ſet forth the time, and the manner of puniſhment.] *Herein fail you not. Given under my hand and ſeal the* —— *day of* —— *in the* —— *year of* ——

Concerning *Penitentiary* houſes for the puniſhment of convicts, ſee title Tranſportation.

Hue and cry.

LORD *Coke* ſaith, that hue and cry (called in ancient records *huteſium & clamor*) do mean the ſame thing; for that *huer* in *French* is to hoot or ſhout, in *Engliſh*, to cry. 2 *Inſt.* 173. 3 *Inſt.* 116. Meaning of words.

But ſince it appeareth by the old books (of which alſo L. *Coke* maketh obſervation, 2 *Inſt.* 173.) that hue and cry was anciently both by horn and by voice, it may ſeem that theſe two words are not ſynonymous, but that this *huteſium* or *hooting* is by the *horn*, and *crying* by the *voice*; with which alſo accordeth the *French* word *hutchet*, which ſignifieth a huntſman's horn: So that hue and cry in this ſenſe will properly ſignify a purſuit by horn and by voice. Which kind of purſuit of robbers by blowing a horn, and by making an outcry, is ſaid to be practiſed alſo in *Scotland*.

And this blowing of a horn, by way of notice or intelligence, in other caſes as well as in the purſuit of felons, ſeemeth to have been in uſe of very ancient time: for amongſt the laws of *Wihtred* king of *Kent*, in the year 696, this is one; that "if a ſtranger go out of the road, "and neither ſhout nor blow a horn, he ſhall be taken for "a thief."

Hue and cry is the old common law proceſs after felons, and ſuch as have dangerouſly wounded any perſon: And this hath received great countenance and authority by ſeveral acts of parliament. 2 *H. H.* 98. Hue and cry, what.

To prevent felonies: In walled towns the gates ſhall be ſhut from ſun ſetting to ſun riſing; and none ſhall lodge without the town, from nine of the clock till day, unleſs his Watches to be kept.

his hoſt will anſwer for him. In other towns, watches ſhall be kept: and if a watchman arreſt a night-walker, and he diſobey and fly, the watchman may make hue and cry. 13 *Ed.* 1. *ſt.* 2. *c.* 4.

Application to the conſtable.

When any felony is committed, or any perſon is grievouſly and dangerouſly wounded, or any perſon aſſaulted and offered to be robbed, either in the day or night; the party grieved, or any other, may reſort to the conſtable of the vill; and, 1. Give him ſuch reaſonable aſſurance thereof, as the nature of the caſe will bear. 2. If he knows the name of him that did it, he muſt tell the conſtable the ſame. 3. If he knows it not, but can deſcribe him, he muſt deſcribe his perſon, or his habit, or his horſe, or ſuch circumſtances as he knows, which may conduce to his diſcovery. 4. If the thing be done in the night, ſo that he knows none of theſe circumſtances, he muſt mention the number of the perſons, or the way they took. 5. If none of all theſe can be diſcovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the conſtable with the fact, and deſire him to ſearch in his town for ſuſpected perſons, and to make hue and cry after ſuch as may be probably ſuſpected, as being perſons vagrant in the ſame night; for many circumſtances may *ex poſt facto* be uſeful for diſcovering a maleſactor, which cannot be at firſt found. 2 *H. H.* 100, 101. 3 *Inſt.* 116.

Juſtice's warrant.

For levying hue and cry, although it is a good courſe to have the warrant (A) of a juſtice of the peace, when time will permit, in order to prevent cauſeleſs hue and cry; yet by the frame of the ſtatutes, it is by no means neceſſary, nor is it always convenient, for the felon may eſcape before the warrant be obtained, and hue and cry was part of the law, before juſtices of the peace were firſt inſtituted. 2 *H. H.* 99.

Conſtable to raiſe the town.

And the duty of the conſtable is, to raiſe the power of the town, as well in the night as in the day, for the proſecution of the offender. 3 *Inſt.* 116.

And to ſearch.

And upon hue and cry levied againſt any perſon, or where any hue and cry comes to a conſtable, whether the perſon be certain or uncertain, the conſtable may ſearch ſuſpected places within his vill, for the apprehending of the felons. 2 *H. H.* 103.

Breaking doors to ſearch.

But though he may ſearch ſuſpected places or houſes, yet his entry muſt be by the door's being open; for he cannot break open doors barely to ſearch, unleſs the perſon againſt whom the hue and cry is levied be there, and

then it is true he may; therefore in caſe of ſuch a ſearch the breaking open the door is at his peril, namely, juſtifiable, if he be there; not juſtifiable, if he be not there. But it muſt be always remembered, that in caſe of breaking open a door, there muſt be firſt a notice given to them within of his buſineſs, and a demand of entrance, and a refuſal, before the doors can be broken. 2 *H. H.* 103. 2 *Haw.* 86.

If the perſon, againſt whom the hue and cry is raiſed, be not found in the conſtablewick, then the conſtable ſhall give notice to the next conſtable, and he to the next, until the offender be found, or till they come to the ſea ſide. And this was the law before the conqueſt. 3 *Inſt.* 116. Notice to the next conſtable.

And the officer of the town where the felony was done, as alſo every officer to whom the hue and cry ſhall afterwards come, ought to ſend to every other town round about him, and not to one next town only. And in ſuch caſes it is needful to give notice in writing (to the purſuers) of the things ſtolen, and of the colour and marks thereof, as alſo to deſcribe the perſon of the felon, his apparel, horſe, and the like, and which way he is gone, if it may be. *Dalt. c.* 54. And to the next.

But if the hue and cry be upon a robbery, burglary, manſlaughter, or other felony committed, but the perſon that did the fact is neither known nor deſcribeable by perſon, clothes, or the like, yet ſuch hue and cry is good, as hath been ſaid, and muſt be purſued, tho' no perſon certain be named or deſcribed. 2 *H. H.* 103. What ſhall be done where the perſon cannot be deſcribed.

And therefore in this caſe, all that can be done is, for thoſe that purſue the hue and cry, to take ſuch perſons as they have probable cauſe to ſuſpect; as for inſtance, ſuch perſons as are vagrants, or ſuch ſuſpicious perſons as come late into their inn or lodgings, and give no reaſonable account where they have been, and the like. *Id.*

By the ſtatute of the 3 *Ed.* 1. *c.* 9. All ſhall be ready, and apparelled, at the commandment and ſummons of ſheriffs (or conſtables, 2 *Inſt.* 171.) and at the cry of the country, to ſue and arreſt felons: on pain of a grievous fine. And if default be found in the lord of the franchiſe, the king ſhall take the franchiſe to himſelf; and if in the ſheriff or other officer, they ſhall have one year's impriſonment, and ſhall make a grievous fine. All perſons ſhall follow the hue and cry.

And by the ſtatute of the 13 *Ed.* 1. *ſt.* 2. *c.* 1. It is likewiſe enacted, that immediately upon robberies and felonies com-

committed, freſh ſuit ſhall be made, from town to town, and from county to county.

And no hue and cry ſhall be lawful, except it be by horſemen and footmen. 27 *El. c.* 13. *ſ.* 10.

And the life of hue and cry is freſh ſuit. 3 *Inſt.* 117.

Breaking doors to arreſt upon purſuit.

If the perſon purſued by hue and cry be in a houſe, and the doors are ſhut, and refuſed to be opened on demand of the conſtable, and notification of his buſineſs, he may break open the doors; and this he may do in any caſe where he may arreſt, though it be only a ſuſpicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the caſe: And the ſame law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 *H. H.* 102.

Killing in the purſuit.

And it ſeems in this caſe, that if he cannot be otherwiſe taken, he may be killed; and the neceſſity excuſeth the conſtable. *Id.*

Arreſting an innocent perſon.

If hue and cry be raiſed againſt a perſon certain for felony, though poſſibly he is innocent, yet the conſtables, and thoſe that follow the hue and cry, may arreſt and impriſon him in the common gaol, or carry him to a juſtice of the peace, to be examined where he was at the time of the felony committed, and the like. *Id.*

Arreſting a perſon by deſcription.

If the hue and cry be not againſt a perſon certain, but by deſcription of his ſtature, perſon, clothes, horſe, and the like; yet the hue and cry doth juſtify the conſtable or other perſon following it, in apprehending the perſon ſo deſcribed, whether innocent or guilty: For that is his warrant; it is a kind of proceſs that the law allows of, not uſual in other caſes, namely, to arreſt a perſon by deſcription. 2 *H. H.* 103.

Caſe of arreſting upon hue and cry levied without cauſe.

In caſe of hue and cry once raiſed and levied, on ſuppoſal of a felony committed, though in truth there was no felony committed, yet thoſe that purſue hue and cry, may arreſt and proceed, as if ſo be a felony had been really committed.

And therefore the juſtification of an impriſonment by a perſon upon ſuſpicion, and by a perſon (eſpecially a conſtable) upon hue and cry levied, do extremely differ; for in the former caſe, there muſt be a felony averred to be done, and it is iſſuable; but in the latter, to wit, upon hue and cry, it need not be averred, but the hue and cry levied upon information of a felony is ſufficient, though perchance the information were falſe.

And the reaſons hereof are theſe: 1. Becauſe the conſtable cannot examine the truth or falſehood of the ſuggeſtion

tion of him that firſt levied it, for he cannot adminiſter to him an oath; and if he ſhould forbear his purſuit of the hue and cry till it be examined by a juſtice of the peace, the felon might eſcape, and the purſuit would be loſt and fruitleſs. 2. Becauſe the conſtable is by the ſeveral acts of parliament compellable to purſue hue and cry; and he is puniſhable, and ſo are thoſe of the vill, if they do it not. 3. Becauſe he that firſt raiſeth a hue and cry, where no felony is committed, that is, he who giveth the falſe information, is ſeverely puniſhable by fine and impriſonment if the information be falſe.

And therefore if he raiſe hue and cry upon a perſon that is innocent, yet they that purſue the hue and cry may juſtify the impriſonment of that innocent perſon; and the raiſer is puniſhable: And by the ſame reaſon, if he give notice of a felony committed, where there was in truth none.

And here the juſtification of the impriſonment is mixed, partly upon the hue and cry, and partly upon their own ſuſpicion; and therefore, 1. In reſpect that it is upon hue and cry, there needs no averment that the felony was done, if the arreſt be by that conſtable that firſt received the information, and ſo raiſed the hue and cry; or if the arreſt were made by that conſtable, or thoſe vills to whom the hue and cry came at the ſecond hand, it muſt be averred that ſuch a hue and cry came to them, purporting ſuch a felony to be done. 2. But alſo inaſmuch as the hue and cry neither names nor deſcribes the perſon of the felon, but only the felony committed, and therefore the arreſt of this or that particular perſon is left to the ſuſpicion and diſcretion of the conſtable, or of the people of the ſecond or third vill, he that arreſts any perſon upon ſuch general hue and cry, muſt aver that he ſuſpected, and ſhew a reaſonable cauſe of ſuſpicion.

But now by the ſtatute of 7 *J.* *c.* 5. the conſtable, or any that come to his aſſiſtance, even in this caſe of hue and cry may plead the general iſſue, and give the whole matter of the juſtification in evidence; for the purſuit of hue and cry, though performed by others as well as the conſtable, is principally the act of the conſtable of the vill, and the others are but as his deputies or aſſiſtants within the precincts of their conſtablewick. 2 *H.* *H.* 101, 2, 3, 4.

It ſeems that they who are taken upon freſh hue and cry are not bailable, as being to be accounted amongſt thoſe

Perſons taken on hue and cry, how far bailable.

those persons, who are under a violent presumption of guilt. 2 *Haw.* 98.

High constables to present those who pursue not hue and cry.

By the 13 *Ed.* 1. *st.* 2. *c.* 6. Constables of hundreds shall be chosen, who shall present before justices assigned, defaults of the suits of towns, and all such as lodge strangers in uplandish towns, for whom they will not answer.

Punishment of those who follow not hue and cry.

And they which levy not hue and cry, or pursue not upon hue and cry, may be indicted, fined, and imprisoned. 3 *Inst.* 117.

Power of the leet to inquire thereof.

And it is an article of the leet to inquire of hues and cries levied and not pursued. 18 *Ed.* 2.

A. Warrant to levy hue and cry on a robbery having been committed.

Westmorland. { To all constables and other officers, as well in the said county of *Westmorland*, as elsewhere, to whom the execution hereof doth or shall belong.

WHEREAS A. I. *of* —— *in the county of* —— *yeoman, hath this day made information upon oath, before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* W. *that on this present* —— *day of* —— *in the* —— *year of the reign of* —— *betwixt the hours of three and four in the afternoon of the same day, at a place called* —— *in the said county of* W. *in the king's highway there, two malefactors and felons to him the said* A. I. *unknown, in and upon him the said* A. I. *then and there being in the peace of God and of our lord the king, feloniously did make an assault, and him the said* A. I. *then and there feloniously did put in great fear and danger of his life, and the sum of* —— *of lawful money of* Great Britain, *of the goods and chattels of him the said* A. I. *from the person, and against the will of him the said* A. I. *then and there violently and feloniously did steal, take, and carry away; and that one of the said malefactors and felons, to him the said* A. I. *unknown, is a tall, strong man, and seemeth to be about the age of* —— *years, is pitted in the face with the small pox, and hath the scar of a wound under his left eye, and had then on a dark brown riding coat,* &c. *and did ride upon a bay gelding with a star on his forehead, and the other,* &c. *And that after the said felony and robbery committed, they the said malefactors*

lefactors and felons, to him the ſaid A. I. *unknown, did fly, and withdraw themſelves to places unknown, and are not yet apprehended: Theſe are therefore to command you forthwith to raiſe the power of the towns within your ſeveral precincts, and to make diligent ſearch therein, for the perſons above deſcribed, and to make freſh purſuit and hue and cry after them from town to town, and from county to county, as well by horſemen as by footmen; and to give due notice thereof in writing, deſcribing in ſuch notice the perſons and the offence aforeſaid, unto every next conſtable on every ſide, until they ſhall come to the ſea ſhore, or until the ſaid malefactors and felons ſhall be apprehended; and all perſons whom you or any of you ſhall as well upon ſuch ſearch and purſuit, as otherwiſe, apprehend or cauſe to be apprehended, as juſtly ſuſpected for having committed the ſaid robbery and felony, that you do carry forthwith before ſome one of his ſaid majeſty's juſtices of the peace in and for the county where he or they ſhall be ſo apprehended, to be by ſuch ju ice examined, and dealt withal according to law. And hereof fail you not reſpectively, upon the peril that ſhall enſue thereon. Given under my hand and ſeal, at ——— in the ſaid county of* W. *the ——— day of ——— aforeſaid, in the year aforeſaid.*

Hundred.

IN ancient times, before the conqueſt, it was ordained for the more ſure keeping of the peace, that all free born men ſhould caſt themſelves into ſeveral companies, by ten in each company; and that every of thoſe ten men ſhould be ſurety and pledge for the forthcoming of his fellows. For which cauſe, theſe companies in ſome places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, ſo becauſe it was then alſo appointed, that ten of theſe companies ſhould at certain times meet together for their matters of greater weight, therefore that general aſſembly was, and yet is, called an hundred. *Lamb. Conſt.*

Hundred whence ſo called.

If any homicide be committed, or dangerous wound given, in the day time, and the offender eſcape, the town ſhall be amerced; and if out of the town, the hundred ſhall be amerced. 2 *Haw.* 74.

Hundred to be amerced for an eſcape.

Hundred answerable in divers other cases.

The hundred ſhall make good the damages, in caſes of robbery; cutting banks; cutting hop-binds; burning houſes, barns, outhouſes, hovels, cocks, mows, or ſtacks of corn, ſtraw, hay, or wood; mines, or pits of coal; deſtroying granaries, or corn intended for exportation; deſtroying turnpikes; or works of navigable rivers; and the like: As may be ſeen under their proper titles.

Damages how to be levied.

Writs of execution which ſhall be ſued out againſt the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, ſhall by the ſheriff on receipt thereof be produced to two juſtices, (1 Q.) in or near the hundred; who ſhall cauſe a taxation to be made and levied by the conſtables in 30 days for paying the plaintiff's coſts and damages, and alſo all ſuch neceſſary expences, as any inhabitants ſhall have been at in defending ſuch action; the ſame being firſt proved on oath before the ſaid juſtices; and the attorney's bill taxed. And the ſaid ſums ſhall be paid to the ſheriff by the conſtables in ten days after the time is expired for collecting; and by the ſheriff, to the perſons entitled to receive the ſame, without any deduction or fee; all in the ſame manner, as is directed by the ſtatute of the 8 *G.* 2. *c.* 16. in caſes of robbery. 22 *G.* 2. *c.* 46. *ſ.* 34.

In the caſe of *K.* v. the hundred of *Halfſhire*, *T.* 33 *G.* 3. it was determined, that an order of juſtices for levying of money upon the inhabitants of an hundred under the riot act, directing that the money, when levied, ſhall be paid into the hands of a banker, ſubject to their further order, is bad, and ought to have been ordered to be paid to the perſons entitled to receive the ſame. And it ſeemed that a writ of execution ſued out by the party who has recovered damages againſt the hundred, and delivered by the ſheriff to the juſtices, is a good foundation for an order to levy the amount. And it alſo appeared, that the order for levying the damages ought to be upon the inhabitants of the *towns*, *pariſhes*, *villages*, and *hamlets*, purſuant to the words of the 27 *Eliz.* and not upon the inhabitants of the *diſtricts* and *pariſhes* within the hundred. *Durnf.* and *Eaſt*, 5 V. 341.

Hunting. See Game.

Huſband. See Wife.

Ideots. See **Lunaticks.**
Impriſonment. See **Arreſt. Commitment.**
Inceſt. See **Lewdneſs.**

Incloſures, *pulling down.*

BY the 13 *Ed.* 1. *ſt.* 1. *c.* 46. Where ſometimes it chanceth, that one having a right to approve, doth then levy a dyke or an hedge, and ſome by night, or at another ſeaſon, when they ſuppoſe not to be eſpied, do overthrow the hedge or dyke, and it cannot be known by verdict of the aſſize or jury, who did overthrow the hedge or dyke, and men of the towns near will not indict ſuch as be guilty of the fact; the towns near adjoining ſhall be diſtrained to levy the hedge or dyke at their own coſt, and to yield damages.

And ſuch perſon as ſhall bring an aſſize thereupon, and have judgment to recover, ſhall have his damages trebled, by the judgment of the court. 3 & 4 *Ed.* 6. *c.* 6.

And by the 9 *G.* 3. *c.* 29. If any perſon ſhall wilfully or maliciouſly demoliſh, pull down, or otherwiſe deſtroy or damage, any fence made for dividing or incloſing any common, waſte, or other lands or grounds in purſuance of any act of parliament, or ſhall cauſe or procure the ſame to be done; he ſhall be guilty of felony, and tranſported for 7 years. Proſecution to be commenced in 18 months after the offence committed.

Indictment.

I. *Indictment, what.*
II. *What offences are indictable.*
III. *Within what time an indictment ſhall be brought.*
IV. *How far ſeveral offenders or ſeveral offences may be joined in one indictment.*
V. *Whether the grand jury may examine witneſſes againſt the king.*
VI. *How many witneſſes are requiſite to an indictment.*
VII. *Whether a grand jury may find an indictment ſpecially.*
VIII. *Indictment to be in* Engliſh.
IX. *Form of an indictment.*
X. *Charges of an indictment.*
XI. *Acquittal of an indictment.*

I. Indictment, what.

INDICTMENT cometh of the *French* word *enditor*, and ſignifieth, in law, an accuſation found by an inqueſt of twelve or more upon their oath. And as the *appeal* is ever the ſuit of the party, ſo the indictment is always the ſuit of the king, and as it were his declaration; and the party who proſecutes it, is a good witneſs to prove it. And when ſuch accuſation is found by a grand jury, without any bill brought before them, and afterwards reduced to a former indictment, it is called a *preſentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquiſition*. 1 *Inſt.* 126. 2 *Haw.* 209.

II. What offences are indictable.

There can be no doubt but that all capital crimes whatſoever, and alſo all kinds of inferior crimes of a public nature, as miſpriſions, contempts, diſturbances of the peace, oppreſſions, and all other miſdemeanors whatſoever of a publick evil example againſt the *common law*, may be indicted;

dicted; but no injuries of a private nature, unleſs they ſome way concern the king. 2 *Haw.* 210.

Alſo it ſeems to be a good general ground, that wherever a *ſtatute* prohibits a matter of publick grievance to the liberties and ſecurity of a ſubject; or commands a matter of publick convenience, as the repairing of the common ſtreets of a town; an offender againſt ſuch ſtatute is puniſhable, not only at the ſuit of the party grieved, but alſo by way of indictment for his contempt of the ſtatute, unleſs ſuch method of proceeding do manifeſtly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought by the party, (as it is ſaid that he may in every action for doing a thing prohibited by the ſtatute, it ſeems queſtionable, whether he may afterwards be indicted, becauſe that would make him liable to a ſecond fine for the ſame offence. *Id.*

But if a ſtatute extend only to *private* perſons, or if it extend to all perſons in general, but chiefly concerns diſputes of a private nature, as thoſe relating to diſtreſſes made by lords on their tenants; it is ſaid that offences againſt ſuch ſtatutes will hardly bear an indictment. 2 *Haw.* 211.

Alſo where a ſtatute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it ſeemeth to be ſettled at this day, that it will not maintain an indictment. *Id. Str.* 679.

But L. *Hale* diſtinguiſhes upon this, and ſays, that if a ſtatute prohibit any act to be done, and by a ſubſtantive clauſe gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the *prohibitory clauſe*, and thereupon fined, but not to recover the penalty; but then it ſeems the fine ought not to exceed the penalty: but if the act be not prohibitory, but only that if any perſon ſhall do ſuch a thing, he ſhall forfeit ſo much, to be recovered by action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding muſt be by action, bill, plaint, or information. 2 *H. H.* 171.

Alſo, where a ſtatute adds a further penalty, to an offence prohibited by the common law; there can be no doubt, but that the offender may be ſtill indicted, if the proſecutor thinks fit, at the common law. And if the indictment for ſuch offence conclude *againſt the form of the ſtatute*, and cannot be made good as an indictment upon the ſtatute, it ſeems to be now ſettled, that it may

be maintained as an indictment at common law. 2 *Haw.* 211.

In the case of *K.* and *Balme*, *T.* 17 *G.* 3. The defendants were indicted for disobeying an order of justices on the statute 13 *G.* 3. *c.* 78. for the widening of a highway. It was objected, that a summary method of proceeding before the justices being directed by the statute, the prosecution ought to have been in that form, and not by way of indictment. But by the court, disobeying an order of justices is an offence at common law; and therefore the prosecutor might proceed either way: the penalty given by the statute is only accumulative. *Cowper*, 648.

III. Within what time an indictment shall be brought.

By the 31 *El. c.* 5. All indictments upon any statute penal, whereby the forfeiture is limited to the king, shall be sued within two years after the offence committed; if the forfeiture is limited to the king and prosecutor, the suit shall be in one year; and in default thereof, the same shall be sued for the king within two years after that year ended. But where a statute limits a shorter time, the suit shall be brought within such time limited.

But for indictments of felonies and other misdemeanors where there is no forfeiture to the king, or to the king and prosecutor, no time is limited by any statute; but the several acts of general pardon have the effect of a like limitation. The last act of which kind was that of the 20 *G.* 2. *c.* 52. for certain offences committed before *June* 15, 1747.

IV. How far several offenders or several offences may be joined in one indictment.

If there be *one offender*, and *several offences* committed by him, as burglary and larceny, they may be contained in one indictment. 2 *H. H.* 173.

But the modern practice is otherwise as to felonies, separate bills of indictment being generally preferred for offences committed at different times.

And in the case of *K.* and *Clendon*, *T.* 4 *G.* 2. There was an indictment setting forth, that the defendant made an assault upon *Sarah Beatniff* and *Elizabeth Cooper*, and did

did them beat, wound, and evil intreat. After verdict for the king, it was moved in arreſt of judgment, that theſe were diſtinct offences, and required different and diſtinct judgments, and might require different and diſtinct fines, and therefore could not be joined in one and the ſame indictment, but there ought to have been a ſeveral indictment for each; and of that opinion was the court, and the judgment was arreſted. *Strange*, 870. *L. Raym.* 1572. But in the caſe of the *King* againſt *Benfield* and *Saunders*, *E.* 33 *G.* 2. the court held this caſe of *Clendon* not to be law; and ſaid, cannot the king call a man to account for a breach of the peace, becauſe he broke two heads inſtead of one? It is a proſecution in the king's name, for the offence charged; and not in the nature of an action, where each perſon injured is to recover ſeparate damages. *Burr. Manſf.* 984.

If there be *ſeveral offenders* that commit the ſame *offence*, though in law they are ſeveral offences in relation to the ſeveral offenders, yet they be may joined in one indictment; as if ſeveral commit a robbery, or burglary, or murder. 2 *H. H.* 173.

So in the aforeſaid caſe of *K.* v. *Benfield* and *Saunders*, which was for the defendant's ſinging a libellous ſong againſt *John* and *Jane Cooke*, the court held, that this being a joint act, done by both, (for they had both joined in the act of ſinging the libellous matter,) therefore they might well be joined in one and the ſame indictment. *Burr. Manſf.* 985.

And ſo it is, though the offences are of ſeveral *degrees*, but dependent one upon another, as the principal in the firſt degree, and the principal in the ſecond degree, to wit, preſent aiding and abetting in the principal, and acceſſary before or after. 2 *H. H.* 173.

Alſo ſeveral perſons may be indicted in the ſame indictment for *ſeveral offences of the ſame nature*, as for keeping diſorderly houſes; but the indictment ought to ſet forth that they ſeverally did ſo. *Id.*

And this is only to be underſtood, where the offences may be joint, as in extortion, maintenance, receiving ſtolen goods, and the like; and not where the offence is a ſeparate act in each, as in the caſe of *K.* againſt *Philips* and others, *M.* 5 *G.* 2. Six were indicted in one indictment for *perjury*, and four of them pleading, were convicted. It was moved in arreſt of judgment, that the crime of perjury is in its nature ſeveral, and two cannot be indicted together.—And by the court: There may be

great inconveniencies if this is allowed; one may be desirous to have a certiorari, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence against one: And they cited a case, 7. 6 *An* 2. against *Hodgson* and others, where two were indicted for being scolds, and compared to barratry, and it was held not to lie. And in the principal case judgment was arrested. *Str.* 921.

In like manner, *E.* 11 *G.* *K.* against *Weston* and others. There was an indictment against six jointly and severally for exercising a trade; and quashed, because there ought to be distinct indictments. *Str.* 623.

Larcenies committed of several things, though *at several times*, and *from several persons*, may be joined in one indictment. 2 *H. H.* 173.

But in practice it is otherwise, and in mercy to the prisoner, that he may not be confused in his defence, or the jury prejudised and bewildered by the consideration of various crimes, depending on various circumstances, at the same time.

V. Whether the grand jury may examine witnesses against the king.

Lord *Hale* says, that the grand jury at the assizes or sessions ought only to hear the evidence for the king, and in case there be probable evidence, they ought to find the bill, because it is but an accusation, and the party is to be put on his trial afterwards. 2 *H. H.* 157.

Which doctrine is also laid down by Ch. J. *Pemberton*, in the case of the earl of *Shaftsbury*, St. Tr. V. 3. p. 415.

But the learned editor of *Hale's History* observes upon this, that Sir *John Hawles* in his remarks on the said case, *St Tr. V.* 4. *p.* 183. unanswerably shews, that a grand jury ought to have the same persuasion of the truth of the indictment as a petty jury, or a coroner's inquest; for they are sworn to present the truth and nothing but the truth.

And L. *Coke* says, that seeing indictments are the foundation of all, and are commonly found in the absence of the party accused, it is necessary there should be substantial proof. 3 *Inst.* 25.

VI. How

VI. How many witneſſes are requiſite to an indictment.

An indictment may be found upon the oath of one witneſs only, unleſs it be for high treaſon, which requires two witneſſes. 2 *Haw.* 256. And unleſs, in any inſtance, it be otherwiſe ſpecially directed by act of parliament.

VII. Whether the grand jury may find an indictment ſpecially.

It ſeems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part falſe; but muſt either find a true bill or *ignoramus* for the whole; and if they take upon them to find it ſpecially, or conditionally, or to be true for part only, and not for the reſt, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 *Haw.* 210.

But where there are two counts in the indictment, as one for a riot, another for an aſſault; the ſame may be conſidered as two diſtinct indictments; and the jury may affirm the bill as to one of the counts, and reject it as to the other. *Cowper*, 325. And where a bill is preſented for murder, the grand jury may find a true bill for manſlaughter only.

VIII. Indictment to be in Engliſh.

All indictments, informations, inquiſitions, and preſentments, ſhall be in *Engliſh*, and be written in a common legible hand, and not court hand; on pain of 50l. to him that ſhall ſue in three months. 4 *G.* 2. *c.* 26. 6 *G.* 2. *c.* 14.

IX. Form of an indictment.

In order to underſtand this matter rightly it is judged requiſite firſt to inſert the entire form of an indictment, and then to take it in pieces, and explain the ſeveral parts of it in their order.

The inſtance which is choſen is on the ſtatute of ſtabbing. 1 *J.* *c.* 8.

The *caption* of the indictment is no part of the indictment itſelf, but is the ſtyle or preamble, or return that is

made from an inferior court to a ſuperior, from whence a *certiorari* iſſues to remove; or when the whole record is made up in form; for whereas the record of the indictment, as it ſtands upon the file in the court where it is taken, is only thus, *The jurors for our lord the king upon their oath preſent*; when this comes to be returned upon a certiorari, it is more full and explicit, as follows: 2 *H. H.* 166.

Weſtmorland. *AT the general quarter ſeſſions of the peace holden at* Appleby *in and for the county aforeſaid, the ſeventh day of* April *in the firſt year of the reign of our ſovereign lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, Before* J. P. *and* K. P. *eſquires, and others their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by the oath of* —— *good and lawful men of the county aforeſaid, ſworn and charged to inquire for our ſaid lord the king, and for the body of the county aforeſaid, it is preſented:*

That John Armſtrong *late of* Appleby *in the county aforeſaid, yeoman, not having God before his eyes, but being moved and ſeduced by the inſtigation of the devil, on the thirtieth day of* March *in the firſt year of the reign of our ſaid ſovereign lord* George *the third, of* Great Britain, France *and* Ireland, *king, defender of the faith, and ſo forth, at the hour of nine in the afternoon of the ſame day, with force and arms, at* Appleby *aforeſaid in the county aforeſaid, in and upon one* George Harriſon *in the peace of God and of our ſaid lord the king then and there being (the aforeſaid* George Harriſon *not having any weapon then drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong) *feloniouſly did make an aſſault; and that the aforeſaid* John Armſtrong, *with a certain drawn ſword of the value of five ſhillings, which he the ſaid* John Armſtrong *in his right hand then and there had and held, the ſaid* George Harriſon *in and upon the right ſide of the belly near the ſhort ribs of him the ſaid* George Harriſon *(the aforeſaid* George Harriſon *as in aforeſaid then and there not having any weapon drawn, nor the aforeſaid* George Harriſon *then and there having firſt ſtricken, the ſaid* John Armſtrong) *then and there feloniouſly did ſtab and thruſt, giving unto the ſaid* George Harriſon *then and there with the ſword aforeſaid, in form aforeſaid, in and upon the right ſide of the belly near the ſhort ribs of him the ſaid* George Harriſon *one mortal*

mortal wound of the breadth of one inch, and of the depth of nine inches; of which ſaid mortal wound, he the ſaid George Harriſon *then and there inſtantly died: And ſo the jurors aforeſaid upon their oath aforeſaid do ſay, that the ſaid* John Armſtrong *him the ſaid* George Harriſon *on the aforeſaid thirtieth day of* March *in the year aforeſaid, at* Appleby *aforeſaid in the county aforeſaid, in manner and form aforeſaid, feloniouſly did kill; againſt the peace of our ſaid lord the now king, his crown and dignity, and againſt the form of the ſtatute in ſuch caſe made and provided.*

Weſtmorland] The name of the county muſt be in the margin, or repeated in the body of the caption. 2 *H. H.* 166.

At the general quarter ſeſſions of the peace] The court where the indictment is made, muſt be expreſſed; otherwiſe the caption is erroneous. 1 *H. H.* 166. 2 *Haw.* 252.

Holden at Appleby *in and for the county aforeſaid*] It muſt appear where the ſeſſions was held; and that the place, where it was held, is within the extent of the commiſſion. 2 *H. H.* 166.

The ſeventh day of April *in the firſt year of the reign of our ſovereign lord* George *the third*] It hath been adjudged, that if the caption of the indictment deſcribe the ſeſſions holden in the time paſt, and not in the time preſent; or as holden on ſuch a day in ſuch a year of the king, without aſcertaining what king, it is inſufficient. But it ſeems to be agreed, that it is ſufficient to expreſs the year of the king, without adding that of our Lord. 2 *Haw.* 255.

The ſeventh day] Figures to expreſs numbers are not allowable in an indictment; but numbers muſt be expreſſed in words. 2 *H. H.* 170. *Cr. Cir.* 109. *And.* 137. *H.* 11 *G.* 2. *K.* and *Haddock.* Or at leaſt in *Roman* numerals. *Str.* 261. *H.* 6 *G. K.* and *Philips.*

Before J. P. and K. P. *eſquires, and others, their aſſociates*] It is not neceſſary to name all the juſtices, but only ſo many as are enabled to hold a ſeſſions, and the reſt may be ſupplied by the words *and others their aſſociates.* 2 H. H. 167.

And although no ſeſſions can be held without one of the juſtices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them,

them, are of the *quorum*, for it is ſufficient if *de facto* the ſeſſions be held before him or them that are of the *quorum*, although not ſo mentioned, and ſo is the uſual courſe. 2 *H. H.* 167.

And alſo to hear and determine, &c.] Theſe words are neceſſary, becauſe without this clauſe (by the commiſſion) they cannot proceed by indictment. 2 *H. H.* 166. *Str.* 442.

By the oath] If the caption concludes that *it is preſented* without ſaying *on their oath*, it ſhall be quaſhed; for their preſentment muſt be upon oath, and ſo returned. 2 *H. H.* 168.

By the oath of ——] It muſt name the jurors that preſented the offence; and therefore by the oath of *A. B.*, *C. D.* and others, is not good; for it may be the preſentment was by a leſs number than 12, or that ſome one of them was incapacitated who might influence all the reſt, as for inſtance a perſon outlawed; in which caſe the indictment may be quaſhed by plea. 2 *H. H.* 167.

Good and lawful men of the county aforeſaid] Theſe words alſo, L. *Hale* ſaith, are neceſſary. 2 *H. H* 167. But Mr. *Hawkins* ſays, they have been often over-ruled; becauſe all men ſhall be intended to be honeſt and lawful, till the contrary appear. 2 *Haw.* 215.

Sworn and charged to inquire for our ſaid lord the king, and for the body of the county aforeſaid] Theſe words alſo ſeem repuiſite to be inſerted. 2 *H. H.* 167. But yet do not ſeem to be abſolutely neceſſary. L. *Raym.* 710.

It is preſented; that John Armſtrong, *late of* Appleby *in the county aforeſaid, yeoman*] The name of the party indicted regularly ought to be inſerted, and inſerted truly in every indictment. 2 *H. H.* 175.

But the inhabitants of a pariſh may be indicted for not repairing the highway, although no perſon is particularly named. *Wood, b.* 4. *c.* 5.

It is ſaid that no perſon indicted can take any advantage of a miſtaken ſurname in the indictment, notwithſtanding ſuch ſurname hath no manner of affinity with its true one, and he was never known by it. 2 *Haw.* 230, 1, 2, 3. 2 *H. H.* 176.

But the miſtake in the chriſtian name is pleadable, and the party ſhall be diſmiſſed from that indictment. 2 *H. H.* 176.

But

But the ſafeſt way is to allow his plea of *miſnomer*, both as to his ſurname and as to his chriſtian name, for he that pleads *miſnomer* of either, muſt in the ſame plea ſet forth what his true name is, and then he concludes himſelf; and if the grand jury be not diſcharged, the indictment may preſently be amended by the grand jury, and returned according to the name he gives himſelf. 2 *H. H.* 176.

Alſo an indictment naming the defendant by two chriſtian names is not good. L. *Raym.* 562.

If the *county* is in the margin, and the indictment ſets forth the act to be done at ſuch a place *in the county aforeſaid*, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at ſuch a place in the county aforeſaid vitiates the indictment, becauſe two counties are named before, and therefore it is uncertain to which it refers. *Crown Cir.* 115, 116.

By the 1 *H.* 5. *c.* 5. In all indictments on which proceſs of outlawry lieth, to the names of the defendants *additions* ſhall be made of their eſtate, or degree, or miſtery, and of the towns, or hamlets, or places, and counties where they were or be converſant.

But although the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead not guilty, without taking advantage of that defect, he ſhall never allege the *miſnomer* or want of addition to ſtop his trial or judgment; for by ſuch his appearance, and pleading to iſſue, the indictment is affirmed, and the *miſnomer* or want of addition ſalved. 2 *H. H.* 176.

And if ſeveral perſons be indicted for one offence, *miſnomer* or want of addition of one, quaſhed the indictment only againſt him, and the reſt ſhall be put to anſwer; for they are in law as ſeveral indictments. 2 *H. H.* 177.

And it is the common practice, where an indictment is inſufficient, while the grand jury is before the court, to amend it by their conſent, in a matter of form as the name or addition of the party, or the like. 2 *Haw.* 245.

Not having God before his eyes, but being moved and ſeduced by the inſtigation of the devil] I do not find it aſſerted by any authority, that theſe words are neceſſary in an indictment.

On the thirtieth day of March *in the firſt year of the reign*, &c.] No indictment can be good, without preciſely ſhewing

ing a certain *day* of the material facts alleged in it. 2 *Haw.* 235.

And if the offence be done in the night, before midnight, the indictment ſhall ſuppoſe it to be done in the day before; and if it happen after midnight, then it muſt ſay, it was done that day after. *Lamb.* 402.

And although the day be inſerted, yet if the *year* is not likewiſe inſerted, the indictment is inſufficient. 2 *H. H.* 177.

But where an indictment charges a man with a bare omiſſion, as not ſcouring ſuch a ditch, it is ſaid, that it needs not ſhew any time. 2 *Haw.* 236.

It is moſt regular to ſet forth the year, by ſhewing the year of the king; yet this may be diſpenſed with for ſpecial reaſons, if the very year be otherwiſe ſufficiently expreſſed. *Id.*

And if it ſay, on ſuch a day laſt paſt, without ſhewing in what year, that is good enough; for the certainty may be found out by the ſtyle of the ſeſſions. *Lamb.* 491.

But though the day or year be miſtaken in the indictment, yet if the offence were committed in the ſame county, though at another time, the offender ought to be found guilty: but then it may be requiſite, if any eſcheat or forfeiture of land be conceived in the caſe, for the petit jury to find the true time of the offence committed; and therefore it is beſt in the indictment to ſet down the time as truly as can be, though it be not of abſolute neceſſity to the defendant's conviction. 2 *H. H.* 179.

And this the rather, becauſe the jury are to find the indictment upon their oaths. *Dalt. c.* 184.

Upon which ground, namely, becauſe the jury are ſworn to preſent the truth, it is beſt to lay all the facts in the indictment as near to the truth as may be: and not to ſay, in an indictment for a ſmall aſſault (for inſtance) wherein the perſon aſſaulted received little or no bodily hurt, that ſuch a one *with ſwords, ſtaves, and piſtols, beat, bruiſed, and wounded him, ſo that his life is greatly deſpaired of*; nor to ſay in an indictment for an highway being obſtructed, that the king's ſubjects cannot go thereon, *without manifeſt danger of their lives*; and the like. Which kind of words, as they are not at all neceſſary, ſo they may ſtagger an honeſt man upon his oath to find the fact as ſo laid.

At the hour of nine in the afternoon of the ſame day] It is not neceſſary to mention the *hour*, in an indictment. 2 *Haw.* 235.

With

With force and arms] By the 37 *H.* 8. *c.* 8. it is enacted, that whereas it hath been commonly uſed in indictments, to put in the ſame words *vi & armis*, and in divers of the ſame indictments to declare the manner of the force and arms, *viz. baculis, cultellis, arcubus, & ſagittis*, or ſuch like, where in truth the parties had no manner of ſuch weapons at the time of the offence committed; therefore for the future, theſe words, or ſuch like, ſhall not of neceſſity be put in any inquiſition or indictment.

But yet where ſuch words are proper and pertinent, it is ſafe and adviſeable to inſert them, if it be to no other purpoſe than to aggravate the offence. 2 *Haw.* 242.

At Appleby *aforeſaid in the county aforeſaid*] No indictment can be good, without expreſsly ſhewing ſome *place* wherein the offence was committed, which muſt appear to have been within the juriſdiction of the court. 2 *Haw.* 236.

But a miſtake of the place will not be material upon the evidence, on not guilty pleaded, if the fact be proved at ſome other place in the ſame county. 2 *Haw.* 237.

And it is not ſufficient that the county be expreſſed in the margent, but the vill where the offence was committed muſt be alleged to be in the county named in the margent, or, *in the county aforeſaid*, which ſeems to be ſufficient where but one county is named before; but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 *Haw.* 220. 2 *H. H.* 180.

In and upon one George Harriſon] Wherever the perſon injured is known to the jurors, his name ought to be put in the indictment. 2 *Haw.* 232.

But if they know not his name, an indictment for the murder of a perſon unknown, or for ſtealing the goods of a perſon unknown, is good. 2 *H. H.* 181.

Alſo there is no need of an addition of the perſon upon whom the offence is committed, unleſs there be a plurality of perſons of the ſame name; neither then is it eſſential to the indictment, though ſometimes it may be convenient for diſtinction ſake to add it. 2 *H. H.* 182.

In the peace of God, and of our ſaid lord the king, then and there being] It is uſual to allege this, but not neceſſary, and poſſibly not true, for he might be breaking the peace at the time. 2 *H. H.* 186.

The aforeſaid George Harriſon *not having any weapon then drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong] An indictment grounded upon an offence made by act of parliament, muſt by expreſs words bring the offence within the ſubſtantial deſcription made in the act of parliament; and thoſe circumſtances mentioned in the ſtatute to make up the offence, ſhall not be ſupplied by the general concluſion *againſt the form of the ſtatute*. 2 H. H. 170.

And ſo it is, if an act of parliament ouſt clergy in certain caſes, as murder *of malice aforethought*, robbery *in or near the highway*, though the offences themſelves were at common law; yet becauſe at common law within clergy, they ſhall not be ouſted of clergy, though convicted, unleſs theſe circumſtances, as of *malice forethought*, or *near the highway*, be expreſſed in the indictment. *Id.*

But there is no neceſſity in an indictment on a publick ſtatute, to recite ſuch ſtatute; for the judges are bound *ex officio* to take notice of all publick ſtatutes. 2 *Haw.* 245.

Yet if the proſecutor take upon him to recite it, and materially vary from a ſubſtantial part of the purview of the ſtatute, and conclude *againſt the form of the ſtatute aforeſaid*, he vitiates the indictment. 2 *Haw.* 246.

Alſo it ſeems to be generally agreed, that a miſrecital of the place or day at which the parliament was holden, vitiates an indictment. 2 *Haw.* 246.

And it hath been adjudged, that a miſrecital of the title of a ſtatute is fatal. 2 *Haw.* 247.

But there is no need to allege in an indictment, that the defendant is not within the benefit of the proviſoes of the ſtatute; although the ſame may be neceſſary in a *conviction:* for ſince no plea can be admitted to a conviction, and the defendant can have no remedy againſt it, but from an exception to ſome defect appearing in the face of it, and and all the proceedings are in a ſummary manner, it is but reaſonable that ſuch a conviction ſhould have the higheſt certainty. 2 *Haw.* 250. 2 *H. H.* 170, 1.

Feloniouſly did make an aſſault] There are ſeveral words of art which the law hath appropriated for the deſcription of the offence, which no circumlocution will ſupply, as *feloniouſly*, in the indictment of any felony; *burglarioufly* in an indictment of burglary; and the like. 2 *H. H.* 184.

And

And if a man be indicted that he *ſtole*, and it is not ſaid *feloniouſly*, this indictment imports but a treſpaſs. 2 *H. H.* 172.

With a certain ſword drawn] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poiſoning, or ſtrangling, it doth not maintain the indictment upon evidence. 2 *H. H.* 185.

Of the value of five ſhillings] Regularly it ought to ſet forth the price of the ſword or weapon, or elſe ſay of no value; for the weapon is a deodand forfeited to the king, and the townſhip ſhall be charged for the value, if delivered to them; but this ſeems not to be eſſential to the indictment. 2 *H. H.* 185.

Which he the ſaid John Armſtrong *in his right hand then and there had and held*] It muſt ſhew in what hand he held his ſword. *Id.*

In and upon the right ſide of the belly near the ſhort ribs of him the ſaid George Harriſon] There muſt be a *certainty* of the offence committed, and nothing material ſhall be taken by intendment or implication; but the ſpecial manner of the whole fact ought to be ſet forth with certainty. 2 *Haw.* 225. 227.

And therefore in the caſe of murder, it ought to ſhew in what part of the body the perſon was wounded: and therefore if it be on his arm, or hand, or ſide, without ſaying whether right or left, it is not good. 2 *H. H.* 185.

If theft be alleged in any thing, the indictment muſt ſet forth the value of the thing ſtolen; that it may appear whether it be grand or petit larceny. 2 *H. H.* 183.

In like manner, an indictment that the defendant took and carried away ſuch a perſon's goods and chattels, without ſhewing what in certain, as one horſe, one cow, is not good. 2 *H. H.* 182.

An indictment that the defendant is a common highwayman, a common defamer, a common diſturber of the peace, and the like, is not good; becauſe it is too general, and contains not the particular matter wherein the offence was committed. *Id.*

In like manner an indictment for divers ſcandalous threatning and contemptuous words, ſpoken of a juſtice of

the peace, is not good, but ought to ſet forth the words in ſpecial. *Str.* 699.

An indictment for diſobeying an order of juſtices, muſt find poſitively, that ſuch an order was made, and not by way of recital, *that whereas* ——— L. Raym. 1363.

But in an indictment on a conviction, it is not neceſſary to ſet forth the conviction at large, but only ſhortly that ſuch a one was before ſuch and ſuch juſtices convicted, according to the form of the ſtatute, and thereupon a warrant was iſſued, &c. L. Raym. 1196.

Then and there feloniouſly did ſtab and thruſt] In an indictment it is beſt, and often neceſſary, to repeat the time and place, to the ſeveral parts of the fact. 2 *H. H.* 178.

Thus in an indictment of murder or manſlaughter, as well the day and place of the ſtroke, or other act done, as of the death, muſt be expreſſed; the former, becauſe the eſcheat or forfeiture of lands relates thereto; the latter, becauſe it muſt appear that the death was within the year and day after the ſtroke. 2 *H. H.* 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to be ſhewed; but this is not neceſſary in all caſes; as namely, where a limb is cut off, ſo it may be alſo a dry blow. 2 *H. H.* 186.

But though the manner and place of the hurt and its nature be requiſite, as to the formality of the indictment, and it is fit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is ſufficient to maintain the indictment. *Id.*

Againſt the peace of our ſaid lord the king] An indictment without concluding againſt the peace, is inſufficient, tho' it be but for uſing a trade not having been an apprentice; for every offence againſt the ſtatute is againſt the peace, and ought ſo to be laid. 2 *H. H.* 188.

Alſo an indictment that concludes againſt the peace, and ſaith not *of our lord the king*, is ſufficient. *Id.*

Of our ſaid lord the king] An indictment for an offence committed in the time of the *late* king, and concluding againſt the peace of the *preſent* king, is not ſufficient. *Burr. Manſf.* 1901. *K.* and *Lookup.*

His

His crown and dignity] An indictment need not conclude *againſt his crown and dignity*, though it be uſual in many indictments. 2 *H. H.* 188.

And againſt the form of the ſtatute in ſuch caſe made and provided] Regularly, if a ſtatute only make an offence, or alter an offence from one crime to another, as making a bare miſdemeanor to become a felony, the indictment for ſuch new made offence, or new made felony, muſt conclude againſt the form of the ſtatute, or otherwiſe it is inſufficient. 2 *H. H.* 192.

But if a man be indicted for an offence, which was at common law, and concludes againſt the form of the ſtatute, but in truth it is not brought by the indictment within the ſtatute, it ſhall be quaſhed, and the party ſhall not be put to anſwer it as an offence at common law. 2 *H. H.* 171.

And if an offence were felony at common law, but a ſpecial act of parliament ouſts the offender of ſome benefit that the common law allowed him, when certain circumſtances are in the fact; though the body of ſuch indictment muſt expreſs thoſe circumſtances, according as they are preſcribed in the ſtatute, yet the indictment need not conclude againſt the form of the ſtatute: Thus on the ſtatute of the 8 *El. c.* 4. in caſe of pick-pockets, the body of the indictment muſt bring them within the expreſs purview of the ſtatute, or otherwiſe they ſhall have the benefit of clergy; but it need not conclude againſt the form of the ſtatute, neither is it uſual in ſuch caſes, for it was felony before, and the ſtatute doth not give a new puniſhment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it ſhould conclude in ſuch caſe againſt the form of the ſtatute, it would not vitiate the indictment, but would be only ſurpluſage. 2 *H. H.* 190.

If an act of parliament. making an offence, be but temporary, and made perpetual by another ſtatute, the indictment concluding againſt the form of the *ſtatute*, is good. 2 *H. H.* 137.

If the former ſtatute be diſcontinued, and revived by another ſtatute the beſt way is to conclude againſt the form of the *ſtatutes*; though there is good opinion that it is good enough to conclude againſt the form of the firſt ſtatute. 2 *H. H.* 173.

If one ſtatute be relative to another, as where the former makes the offence, and the latter adds the penalty; the

indictment ought to conclude againſt the form of the *ſtatutes*. 2 *H. H.* 173.

X. Charges of an indictment.

By the 10 & 11 *W. c.* 23. No clerk of aſſize, clerk of the peace, or other perſon, ſhall take any fee of any perſon bound over to give evidence againſt a traitor or felon, for the diſcharge of his recognizance; nor ſhall take more than 2s. for drawing any bill of indictment againſt any ſuch felon: On pain of 5l. to the party grieved, with full coſts. And if he draw a bill defective, he ſhall draw a new one *gratis*, on the like pain.

For the drawing of indictments for other miſdemeanors, not being treaſon or felony no fee is limited by any ſtatute: And therefore the ſame dependeth upon the cuſtom and ancient uſage.

XI. Acquittal on an indictment.

By the 14 *G.* 3. *c.* 20. Every perſon charged with any felony or other crime, who ſhall on his trial be acquitted, or againſt whom no indictment ſhall be found by the grand jury, or who ſhall be diſcharged by proclamation for want of proſecution,——ſhall be immediately ſet at large in open court, without payment of any fee to the ſheriff or gaoler: but in lieu thereof, the treaſurer, on a certificate ſigned by one of the judges or juſtices before whom ſuch priſoner ſhall have been diſcharged, ſhall pay out of thegeneral rate of the county or diſtrict ſuch ſum as hath been uſually paid, not exceeding 13s. 4d.

But an action cannot be brought by the perſon acquitted of felony againſt the proſecutor of the indictment, without obtaining a copy of the record of his indictment and acquittal; which in proſecutions for felony, it is not uſual to grant, if there is any, the leaſt, probable cauſe to found ſuch proſecution upon. For it would be a very great diſcouragement to the publick juſtice of the kingdom, if proſecutors for felonies, who had a tolerable ground of ſuſpicion, were liable to be ſued at law whenever their indictments miſcarried.——But an action on the caſe for a malicious proſecution may be founded on ſuch an indictment whereon no acquittal can be, as if it be rejected by the grand jury, or be *coram non judice*, or be inſufficiently drawn;

drawn; for it is not the danger of the plaintiff, but the ſcandal, vexation, and expence, upon which this action is founded. However, any probable cauſe for preferring it is ſufficient to juſtify the defendant, provided it doth not appear that the proſecution was malicious. 3 *Black.* 126. *Burr. Mansf.* 1971.

T. 2 *G.* 3. *Morriſon* and *Kelly.* At the ſittings in *Middleſex*, an action came on to be tried, for a malicious proſecution in indicting the plaintiff for keeping a diſorderly houſe. To prove the fact, the clerk of the peace for the *Weſtminſter* ſeſſions attended, with the original record of the acquittal. It was objected, that there ought to be a copy of the record *granted by the court* before which the acquittal is had, in order to ground an action for a malicious proſecution. But it was ruled by L. *Mansfield*, That though this is neceſſary, where the party is indicted for *felony*, yet the practice is otherwiſe in caſe of miſdemeanors. *Black. Rep.* 385.

Condition of a recognizance to prefer a bill of indictment.

THE condition of this recognizance is ſuch, That if the above bound A. I. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at —— in and for the ſaid county, and then and there prefer a bill of indictment againſt* A. O *late of —— yeoman, for the felonious taking and carrying away of —— the property of —— and ſhall then and there give evidence concerning the ſame, to the jurors who ſhall inquire thereof on the part of our ſaid lord the king: And in caſe the ſame be found a true bill, Then if the ſaid* A. I. *ſhall perſonally appear before the jurors who ſhall paſs upon the trial of the ſaid* A. O. *and give evidence upon the ſaid indictment, and not depart without leave of the court, Then this recognizance to be void.*

Condition of a recognizance to anſwer to an indictment.

THE condition of this recognizance is ſuch, That if the above bound A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at —— in and for the ſaid county, then and there to anſwer to an indictment to be preferred againſt him by* A. I. *of —— yeoman, for aſſault-*

aſſaulting and beating him the ſaid A. I. *and not depart without leave of the court, Then this recognizance to be void.*

Indorſing a warrant in another county. See Warrant.

Infants.

Infant, who.

BY an infant, or minor, is meant any one who is under the age of 21 years. 1 *Inſt.* 2.

Committing a crime under 14.

It is ſaid generally, that thoſe who are under a natural diſability of diſtinguiſhing between good and evil, as infants under the age of 14 years, which is called the age of diſcretion, are not puniſhable by any criminal proſecution whatſoever. But this muſt be underſtood with ſome allowance; for if it appear by the circumſtances, that an infant under the age of diſcretion, could diſtinguiſh between good and evil, as if one of the age of nine or ten years kill another and hide the body, or make excuſes, or hide himſelf, he may be convicted and condemned, and forfeit as much as if he were of full age: But in ſuch caſe the judges will in prudence reſpite the execution, in order to get a pardon; and it is ſaid, that if an infant apparently wanting diſcretion, be indicted and found guilty of felony, the juſtices themſelves may diſmiſs him without a pardon. And in general it muſt be left to the diſcretion of the judge, upon the circumſtances of the caſe, how far an infant, under that age, is *capax doli*, or hath knowledge to diſcern betwixt good and evil. *Hale's Pl.* 43. 1 *Haw.* 2. 1 *H. H.* 18.

An infant of ten years of age convicted of murder.

A remarkable inſtance of this kind we have in the caſe of *William York*. At *Bury* ſummer aſſizes 1748, *William York*, a boy of ten years of age, was convicted before L. Ch. J. *Willes*, for the murder of a girl of about five years of age; and received ſentence of death. But the chief juſtice, out of regard to the tender years of the priſoner, reſpited execution, till he ſhould have an opportunity of taking the opinion of the reſt of the judges, whether it was proper to execute him or not, upon the ſpecial circumſtance of the caſe; which he reported to the judges as follows: The boy and girl were pariſh children, but under the care of a pariſhioner, at whoſe houſe they were lodged and maintained. On the day the murder

murder happened, the man of the houſe and his wife went out to their work early in the morning, and left the children in bed together. When they returned from work the girl was miſſing; and the boy being aſked what was become of her, anſwered, that he had helped her up, and put on her clothes, and that ſhe was gone he knew not whither. Upon this, ſtrict ſearch was made in the ditches and pools of water near the houſe, from an apprehenſion that the child might have fallen into the water. During this ſearch, the man under whoſe care the children were, obſerved that a heap of dung near the houſe had been newly turned up. And upon removing the upper part of the heap he found the body of the child, about a foot's depth under the ſurface, cut and mangled in a moſt barbarous and horrid manner. Upon this diſcovery, the boy, who was the only perſon capable of committing the fact, that was left at home with the child, was charged with the fact, which he ſtiffly denied. When the coroner's jury met, the boy was again charged, but perſiſted ſtill to deny the fact. At length being cloſely interrogated, he fell to crying, and ſaid he would tell the whole truth. He then ſaid, that the child had been uſed to foul herſelf in bed; that ſhe did ſo that morning (which was not true, for the bed was ſearched and found to be clean); that thereupon he took her out of the bed and carried her to the dung heap; and with a large knife, which he found about the houſe, cut her in the manner the body appeared to be mangled, and buried her in the dung heap; placing the dung and ſtraw that was bloody under the body, and covering it up with what was clean; and having done ſo, he got water and waſhed himſelf as clean as he could. The boy was the next morning carried before a neighbouring juſtice, before whom he repeated his confeſſion with all the circumſtances he had related to the coroner and his jury. The juſtice very prudently deferred proceeding to a commitment, till the boy ſhould have an opportunity of recollecting himſelf. Accordingly he warned him of the danger he was in, if he ſhould be thought guilty of the fact he ſtood charged with, and admoniſhed him not to wrong himſelf; and then ordered him into a room where none of the crowd that attended ſhould have acceſs to him. When the boy had been ſome hours in this room, where victuals and drink were provided for him, he was brought a ſecond time before the juſtice, and then he repeated his former confeſſion: Upon which he was committed to gaol.

On the trial, evidence was given of the declarations before mentioned to have been made before the coroner and his jury, and before the juſtice; and of many declarations to the ſame purpoſe, which the boy made to other people after he came to gaol, and even down to the day of his trial. For he conſtantly told the ſame ſtory in ſubſtance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with ſome other circumſtances tending to corroborate the confeſſion, he was convicted. Upon this report of the chief juſtice, the judges having taken time to conſider of it, unanimouſly agreed, 1. That the declarations ſtated in the report were evidence proper to be left to the jury. 2. That ſuppoſing the boy to have been guilty of the fact, there are ſo many circumſtances ſtated in the report which are undoubtedly tokens of what L. Ch. J. *Hale* ſomewhere called a *miſchievous diſcretion*, that he is certainly a proper object for capital puniſhment, and ought to ſuffer. For it would be of very dangerous conſequence to have it thought, that children may commit ſuch atrocious crimes with impunity. There are many crimes of the moſt heinous nature, ſuch as in the preſent caſe the murder of young children, poiſoning parents or maſters, burning houſes, and the like, which children are very capable of committing, and which they may in ſome circumſtances be under ſtrong temptations to commit; and therefore, though the taking away the life of a boy of ten years old may ſavour of cruelty, yet as the example of this boy's puniſhment may be a means of deterring other children from the like offences, and as the ſparing this boy merely on account of his age, will probably have a quite contrary tendency, —— in juſtice to the publick, the law ought to take its courſe, unleſs there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderneſs and caution, adviſed the chief juſtice to ſend another reprieve for the priſoner; ſuggeſting that it might poſſibly appear on further inquiry, that the boy had taken this matter upon himſelf, at the inſtigation of ſome perſon or other, who hoped by this artifice to ſcreen the real offender from juſtice. Accordingly, the chief juſtice did grant one or two more reprieves; and deſired the juſtice who took the boy's examination, and alſo ſome other perſons in whoſe prudence he could confide, to make the ſtricteſt inquiry they could into the affair, and make report to him. At length he receiving no further light, determined

termined to ſend no more reprieve, and to leave the priſoner to the juſtice of the law at the expiration of the laſt. But before the expiration of that reprieve, execution was reſpited till further order, by warrant from one of the ſecretaries of ſtate. And at the ſummer aſſizes 1757, he had the benefit of his majeſty's pardon, upon condition of his entering immediately into the ſea ſervice. *Foſt.* 70.

Under ſeven.

But within ſeven years of age, there can be no guilt whatſoever of any capital offence; the infant may be chaſtized by his parents or tutors, but cannot be capitally puniſhed, becauſe he cannot be guilty; and if he be indicted for ſuch an offence as is in its nature capital, he muſt be acquitted. 1 *H. H.* 19, 20.

Committing a rape.

An infant under 14 is preſumed by law unable to commit a rape, and therefore it ſeems cannot be guilty of it: and though in other felonies *malitia ſupplet ætatem* in ſome caſes, yet it ſeems as to this fact the law preſumes him impotent, as well as wanting diſcretion. 1 *H. H.* 630.

Forcible entry.

An infant may be guilty of forcible entry, in reſpect of perſonal actual violence. 1 *Haw.* 147. And the juſtices may fine him therefore; but yet it ſhall be good diſcretion in the juſtices of the peace, to forbear the impriſonment of ſuch infant. *Dalt. c.* 126.

Becauſe it is ſaid, that he ſhall not be ſubject to corporal puniſhment, by force of the general words of any ſtatute, wherein he is not expreſsly named. 1 *Haw.* 147.

Shall be liable to damages for treſpaſs.

But if one who wants diſcretion, commit a treſpaſs, againſt the perſon or poſſeſſion of another, he ſhall nevertheleſs be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2. 1 *H. H.* 15, 16.

May bring an appeal.

An infant may bring an appeal, although it take from the defendant the benefit of waging battle; but he muſt proſecute ſuch appeal by a guardian. 2 *Haw* 161, 162.

An appeal likewiſe may be brought againſt him. 2 *Haw.* 168.

Cannot be an approver.

An infant under the age of diſcretion cannot be an approver; becauſe he cannot take the oath requiſite in that caſe. 2 *Haw.* 205.

How far he may be a witneſs.

In caſe of a rape committed upon a child of 12 years old, ſuch child may be ſworn as evidence; yea, if ſhe be under that age, if it appear to the court that ſhe knows and conſiders the obligation of an oath, ſhe may be ſworn. And in caſe of evidence againſt witches, an infant of nine years old was ſworn. 1 *H. H.* 634. *Dalt.* 378.

In

In the case of *K.* v. *Brasier*, tried before Mr. J. *Gould*, at *York*, in the year 1778, when a case was reserved for the opinion of the twelve judges. The indictment was for a rape on the body of an infant under 7 years of age: the information of the infant was received in evidence against the prisoner; but as she had not attained the age of presumed discretion, and did not appear to possess sufficient understanding to be aware of the dangers of perjury, she was not sworn. The prisoner was convicted; but the judgment was respited, on a doubt, whether evidence, under any circumstances whatever, could be legally admitted in a criminal prosecution except upon oath? The judges were unanimously of opinion, that no testimony whatever can be legally received except upon oath; and that an infant, tho' under the age of 7 years, may be sworn in a criminal prosecution, provided such infant appears, on strict examination by the court, to possess a sufficient knowledge of the nature and consequences of an oath: for there is no precise or fixed rule as to the time within which infants are excluded from giving evidence; but their admissibility depends upon the sense and reason they entertain of the danger and impiety of falsehood, which is to be collected from their answers to questions propounded to them by the court; but if they are found incompetent to take an oath, their testimony cannot be received. They determined therefore, that the information of the infant which had been given in evidence in the present case, ought not to have been received. *Leach's Crown Law*, 182 (*a*).

Whether he may be a juror.

An infant before 21 years of age shall not be sworn in an inquest. 7 *W.* c. 32. *s.* 4. 1 *Inst.* 172.

Woman's age of dower, marriage, and chusing guardian.

A woman at 9 years of age may have dower; at 12 may consent to marriage; and at 14 is of age of discretion, and may chuse a guardian. 1 *Inst.* 78.

Man's age of allegiance, marriage, and chusing guardian.

A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of discretion, may consent to marriage, and chuse his guardian. *Id.*

Cannot make a deed.

At 21, and not before, persons may bind themselves by any deed, and alien lands, goods and chattels. 1 *Inst.* 171.

Nor enter into recognizance.

Upon which ground infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their sureties only.

(*a*) See more on this subject, title **Evidence**.

But

But an infant may bind himſelf to pay for his neceſſary meat, drink, apparel, phyſick, and ſuch like; and alſo for his good teaching or inſtruction, whereby he may profit himſelf afterwards; but if he binds himſelf in an obligation or other writing, with a penalty for the payment of any of theſe, that obligation ſhall not bind him. 1 *Inſt.* 172 (*a*). May contract for neceſſaries.

And in *Earle*'s caſe, 1 *Salk.* 387. it is ſaid, that an infant may buy neceſſaries, but cannot borrow money to buy; for he may miſapply the money, and therefore the law will not truſt him, but at the peril of the lender, who muſt lay it out for him, or ſee it laid out.

And it ſhall be only for neceſſaries, and not for matters of luxury or extravagance; and if after he comes of age he is prevailed on, by ſurprize or other undue means, to give ſecurity, yet a court of equity on conſideration of circumſtances will relieve. 2 *Atk.* 35.

Alſo other things of neceſſity ſhall bind him, as a preſentation to a benefice; for otherwiſe the lapſe ſhall incur againſt him. 1 *Inſt.* 172. May preſent to a benefice.

And infants ſeiſed of eſtates in truſt, or by way of mortgage, may make conveyances thereof, as the courts of chancery or exchequer ſhall direct. 7 *An.* *c.* 19. 4 *G.* 3. *c.* 16. May convey in a court of equity.

And they may ſurrender leaſes in the courts of chancery or exchequer, in order to renew the ſame. 29 *G.* 2. *c.* 31. May ſurrender in a court of equity.

Alſo an infant hath, without conſent of any other, capacity to purchaſe, for it is intended for his benefit; and at his full age he may either agree thereunto, and perfect it, or without any cauſe to be alleged, waive, or diſagree to the purchaſe: And ſo may his heirs after him, if he agree not thereunto after his full age. 1 *Inſt.* 2. May purchaſe.

The common law ſeems not to have determined preciſely, at what age one may make a teſtament of a perſonal eſtate; it is generally allowed, that it may be made at the age of 18, and ſome ſay under, for the common law will not prohibit the ſpiritual court in ſuch caſes. 1 *Inſt.* 89. 1 *H. H.* 17. May make a will.

The age of diſcretion is 14; and therefore it may ſeem that one may make a teſtament of perſonal eſtate at that age.

(*a*) See a caſe on this ſubject. *Durnf.* and *Eaſt*, 1 V. 40.

A per-

May be an executor.

A perſon is of age to be an executor at 17; and an adminiſtration of any one during the minority of an infant ceaſeth when the infant comes to that age. 5 *Co. Pigot's* caſe. 1 *H. H.* 17.

May bequeath the tuition of his children.

Any perſon having child or children, under 21 years of age, and not married, may by deed or will atteſted by two witneſſes, diſpoſe of the cuſtody and tuition of ſuch child or children, until they ſhall be of the age of 21, or for a leſſer time; and this, whether ſuch parent be within or above the age of 21. 12 *C.* 2. *c.* 24. *ſ.* 8.

May ſue by prochein amy.

An infant cannot anſwer but by guardian; but he may ſue either by his next friend or by guardian. 3 *Salk.* 196.

In what caſe he may releaſe a debt.

If an infant of the age of 17 years releaſe a debt, this is void; but if an infant make the debtor his executor, this is a good releaſe in law of the action. 1 *Inſt.* 264.

At what age he may be bound apprentice.

By the 5 *El. c.* 4. Perſons above the age of 10 years, by their own conſent and agreement, may be bound apprentices.

And by the 5 *El. c.* 5. Any perſon above ſeven years old may be bound apprentice to the ſea ſervice.

By the 43 *El. c.* 2. No age is limited for the binding of pariſh apprentices; ſo that it ſeemeth they may be bound at the age of ſeven, when they ceaſe to be nurſe children, and conſequently may be taken from the mother.

Infant apprentice embezzling goods.

It ſhall be felony without benefit of clergy, to ſteal goods to the value of 40 s. out of an houſe, though the houſe be not broken open; but this ſhall not extend to apprentices under 15 years of age. 12 *An. ſt.* 1. *c.* 7.

Infant ſervant embezzling goods.

Servants above the age of 18, embezzling their maſter's goods to the value of 40 s. ſhall be puniſhed as felons. 21 *H.* 8. *c.* 7.

Information.

Information in general.

LORD *Hale* ſays, Though informations are practiſed oftentimes in the crown office in caſes criminal, and by many penal ſtatutes the proſecution upon them is by the acts themſeves limited to be by *bill*, *plaint*, *information*, *or indictment*; yet thus much is obſervable, that the method of proſecution of *capital* offences is ſtill to be

be by indictment; and in all *criminal cauſes not capital*, the moſt regular and ſafe way and moſt conſonant to the ſtatute of *magna charta* and other ſtatutes is by preſentment or indictment of twelve ſworn men. 2 *H. H.* 151.

Mr. *Hawkins* diſtinguiſhes informations into two kinds; ſuch as are merely at the ſuit of the king, and ſuch as are partly the ſuit of the king, and partly the ſuit of the party; and ſays, It hath been holden that the king ſhall put no one to anſwer for a wrong done principally to another without an indictment or preſentment of a jury; but I do not find this diſtinction confirmed by experience; for it is every day's practice, agreeable to numberleſs precedents, to proceed by way of information, either in the name of the attorney general, or of the maſter of the crown office, for offences done principally to private perſons, as for batteries, cheats, reſcuing perſons from legal arreſts, perjuries and ſubornations thereof, forgeries, conſpiracies, and the like; as well as for offences done principally to the king, as for libels, ſeditious words, riots, extortions, diſobeying the king's writs, abuſing the king's commiſſion to the oppreſſion of the ſubject, and in general any other offences againſt the publick good, or againſt the firſt and obvious principles of juſtice and common honeſty. 2 *Haw.* 260.

Information qui tam.

Informations partly at the ſuit of the king and partly at the ſuit of the party are commonly called informations *qui tam*, from thoſe words in the information when the proceedings were in *Latin*, *qui tam pro domino rege quam pro ſe ipſo*, &c. 2 Haw. 259.

Action upon a ſtatute.

Of the near affinity to an information *qui tam*, is an action upon the ſtatute: which is either a *private* action, which is, when an action is given upon a ſtatute to the king, and to the *party grieved* only; or a *popular* action, which is, where the action is given to the *people* in general, that is, to any one that will ſue for the king, and for himſelf.

But if the king commenceth his ſuit before the informer, the king ſhall have the whole forfeiture (becauſe in ſuch caſe he alſo is the informer); and he may, before the informer begins his ſuit, releaſe the penalty to the offender, and bar all others; but if after a popular action is brought by the informer, the king's attorney will enter *ulterius non vult proſequi*, the informer may proſecute for his part. *Wood*, *b.* 4. *c.* 4.

And in general, it ſeems that of common right an information *at the ſuit of the king*, or an action in the nature thereof,

thereof, may be brought for offences againſt ſtatutes, whether they be mentioned by ſuch ſtatutes or not, unleſs other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 *Haw.* 260.

But an information or action *qui tam* will not lie on any ſtatute which prohibits a thing as being an immediate offence againſt the publick good in general, under a certain penalty, unleſs the whole or part of ſuch penalty be expreſsly given to him who ſhall ſue for it; becauſe otherwiſe it goes to the king, and nothing can be demanded by the party: But where ſuch ſtatute gives any part of ſuch penalty to him who will ſue for it by action or information, any one may bring ſuch action or information, and lay his demand, *as well for our lord the king as for himſelf.* 2 Haw. 256.

Alſo where a ſtatute prohibits or commands a thing, the doing or omiſſion whereof is an immediate danger to the party, and alſo highly concerns the peace, ſafety, or good government of the publick, or the honour of the king, or of his ſupreme courts of juſtice, it ſeems to be the general opinion, that the party grieved may bring his action *qui tam* on ſuch ſtatute. 2 *Haw.* 265.

In what time a qui tam action ſhall be brought.

By the 31 *El. c.* 5. *All actions, ſuits, bills, indictments, or informations on any penal ſtatute, whereby the forfeiture is limited to the king, ſhall be brought within two years after the offence committed; if limited to the king, and to any other who ſhall proſecute, then within one year; and in default of ſuch proſecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by ſtatute to be brought within ſhorter time, then they ſhall be brought within ſuch time limited.* ſ. 5, 6.

On any penal ſtatute] But if an offence prohibited by a penal ſtatute, be alſo an offence at common law; the proſecution of it, as of an offence at common law, is no way reſtrained thereby. 2 *Haw.* 272.

To any other who ſhall proſecute] That is, to a common informer; and therefore the party grieved is not within the reſtraint of this ſtatute, but may ſue in the ſame manner as before. *Id.*

Two informations on the ſame day.

If two informations be exhibited on the ſame day, for the ſame offence, they mutually abate one another. 2 *Haw.* 275.

In what county it ſhall be laid.

By the 21 J. c. 4. *All offences againſt any penal ſtatute, for which any common informer may ground a popular action, bill,*

bill, plaint, ſuit, or information, before the judges of aſſize, or juſtices of the peace in their general or quarter ſeſſions (having power to hear and determine the ſame), ſhall be proſecuted in the county where they were committed, and not elſewhere; and if the offence is not proved to have been committed in the ſame county, the defendant ſhall be found not guilty. ſ. 1, 2.

Provided, that informations, ſuits, or actions againſt popiſh recuſants, or perſons charged with maintenance, champerty, or buying of titles, may be laid in any county. ſ. 5.

Againſt any penal ſtatute] *H.* 8 *W. K.* and *Gaul. Holt.* Ch. J. ſaid, ten judges had agreed that this ſtatute doth not extend to any offence created ſince; ſo that proſecutions on ſubſequent penal ſtatutes are not reſtrained thereby; but this ſtatute is as to them, as it were repealed *pro tanto.* 1 *Salk.* 372.

For which any common informer may ground a popular action] Therefore this extends not to any ſuit by a party grieved, or by the attorney general; but only to thoſe brought by common informers. 2 *Haw.* 269, 270.

General or quarter ſeſſions, having power to hear and determine the ſame] Yet this gives no juriſdiction to juſtices of the peace, which they had not before; but only appoints, that where informations might have been brought in the courts at *Weſtminſter* or before juſtices of the peace, ſuch informations ſhall be now brought before juſtices of the peace only. *Cro. Car.* 112.

In the county where they were committed] *H.* 7 *G. Smith* and *Potter.* In the king's bench. In a *qui tam* on the 5 *Eliz.* for exerciſing a trade without an apprenticeſhip, it was moved to ſtay the proceedings, becauſe the nominal plaintiff had releaſed, and the fact was laid at *Cambridge*, whereas the juriſdiction of the king's bench is at laſt ſettled to be reſtrained by the 21 *J. c.* 4. to actions ariſing in the county where the king's bench ſits, ſo that if they were to go on to trial, the plaintiff could have no effect of his ſuit. And of this opinion was the court, and they made a rule that proceedings ſhould be ſtayed. *Str.* 415.

And not elſewhere] But where a ſubſequent ſtatute gives a remedy for the recovery of a penalty in any court of record generally, it ſo far impliedly repeals this reſtraint, and conſequently leaves the informer at his liberty to ſue in the courts at *Weſtminſter.* 2 *Haw.* 270.

Also where a statute limits suits by an informer *qui tam*, to other courts than those of *Westminster-hall*; yet any one may, by construction of law, exhibit an information in the exchequer, for the whole penalty, for the use of the king. 2 *Haw.* 268.

Sessions hath not power without express words.

If jurisdiction be given to the sessions to hear and determine, and it is not said by information; this shall be by indictment, and not information. *Cro. Car.* 112.

Time of exhibiting the information to be entred.

By the 18 El. c. 5. *Upon every information which shall be exhibited by a* (common) *informer, except for maintenance, champerty, buying of titles, or embracery; a note shall be made of the day, month, and year of the exhibiting thereof; and it shall be taken to be of record from that time forward and not before; and no process shall be issued on such information, till it be exhibited in form aforesaid.* s. 1.

Oath to be made on exhibiting the information.

And by the 21 J. c. 24. *No officer shall enter any information, bill, or plaint, count or declaration, till the informer hath made oath before some of the judges of the court, that the offence was not committed in any other county, and that he believeth in his conscience, that the offence was committed within a year before the information or suit; the oath to be there entered of record.* s. 3.

Recognizance to be given.

And in the court of king's bench, *the clerk of the crown shall not* (*except by order of court*) *exhibit or receive any information in the name of the master of the crown office, for trespasses, batteries, or other misdemeanors, or issue any process thereupon, before he shall have taken, or shall have delivered to him a recognizance from the prosecutor, with his place of abode, title, or profession, to be entred, —— to the person against whom the information is exhibited, in the penalty of* 20l. *that he will effectually prosecute such information, and abide by and observe such orders as the said court shall direct; which recognizance the said clerk of the crown, and also every justice of the peace where the cause of such information shall arise, are impowered to take; after the taking or receipt whereof, he shall make an entry thereof upon record, and shall file a memorandum thereof in some publick place in his office to which all persons may resort without fee.* 21 J. c. 4. s. 2. 6.

In the name of the master of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at common law. 2 *Haw.* 262.

And

And the general practice of the court of king's bench is, not to order an information to be filed, without first making a rule upon the defendant to shew cause to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of some offence of an enormous kind, or dangerous tendency. The defendant must be personally served with the rule, and if he do not at the day given for that purpose satisfy the court by affidavits, that the substance of the charge is false or frivolous, or other reasonable cause against the prosecution, the court usually grants the information. 2 *Haw.* 262.

Rule to shew cause.

In the case of *K.* v. *Webster*, *T.* 29 *G.* 3. a rule had been obtained calling on the defendant, who was a justice of the peace for *Devon*, to shew cause why an information should not be exhibited against him, for having improperly convicted a person for killing a hare, the conviction having been afterwards quashed at the sessions. The party applying for the information, charged the defendant with very gross misconduct; but *Bearcroft*, who shewed cause, took a preliminary objection to the court's entering into the merits, because the party convicted, who applied for the information, had not made any affidavit of his being a qualified person, and that he had taken out a certificate. And he contended, that it was the constant practice of the court to refuse applications of this sort for acts of injustice done to individuals under pretence of certain improper acts done by them, unless those persons made an exculpatory affidavit denying the fact with which they were charged; as in the case of libels. *Erskine* and *Fanshaw* contended, that that was not necessary in a case like the present. This application is not made on account of the injury done to the individual, but on account of the injury done to the publick, in a gross abuse of a judicial duty. And whatever might be the acknowledged demerits of the suffering party, still the crime was the same in the magistrate, who acted in open violation of his duty. L. *Kenyon*, Ch. J. The question is not whether the doors of justice shall be stopped, but whether justice shall be approached by this particular avenue. If the defendant has acted improperly, however guilty the party applying might be of the charge which was imputed to him, there are other ways open to him for redress. But we cannot interfere in this particular manner, according to the established rules of the court, without an affidavit from the party complaining that he is innocent of the fact with

The person applying must first make an exculpatory affidavit denying the fact.

which he was charged. I remember an application of this ſort againſt Sir *John Fielding*, for having iſſued a warrant againſt one *Bernard*, upon a charge againſt him (not upon oath) by the duke of *Marlborough*, for ſending threatening letters to extort money from the duke, but the information was denied for want of ſuch an exculpatory affidavit from *Bernard*. *Aſhhurſt* and *Groſe* J^s concurred (*Buller* J. abſent). Rule diſcharged. *Durf.* and *Eaſt*, 3 V. 388.

Proceſs on an information.

By the 21 J. c. 4. *The like proceſs ſhall be awarded upon an information by a common informer, as in an action of treſpaſs* vi et armis *at the common law.* ſ. 1.

And conſequently, the proceſs in all ſuch ſuits muſt be by attachment, or *pone per vadios*, and after by diſtreſs infinite, where by the return the party appears to be ſufficient, otherwiſe by *capias*. 2 Haw. 284.

Proceſs to be indorſed.

And *on every proceſs upon an information by a common informer, ſhall be indorſed as well the party's name that purſueth the proceſs, as alſo the ſtatute upon which the information is grounded.* 18 El. c. 5. ſ. 1.

Proceſs on a criminal information.

But on a *criminal* information, it is the uſual practice of the crown office, firſt, to award a *ſubpœna*; and after the return thereof, if no appearance be entred in four days, and an affidavit be made of the ſervice of the *ſubpœna*, to make out a *capias* of courſe, where the defendants are informed againſt in their private capacity, and a *diſtringas* where they are ſued as a corporation aggregate. 2 *Haw.* 284.

General iſſue.

If any information, ſuit, or action, ſhall be brought againſt any perſon an a penal ſtatute, the defendant may plead the general iſſue, and give the ſpecial matter in evidence. 21 J. c. 4. ſ. 4.

Information not quaſhed upon motion.

The court will not generally quaſh an information upon motion, but the party muſt either plead, demur, or move in arreſt of judgment. 1 *Salk.* 372. *Str.* 185. 953.

Certainty required in an information.

But ſeeing that an information differs from an indictment in little more than this, that the one is found by the oath of 12 men, and the other is not ſo found, but is only the allegation of the officer or perſon who exhibits it; whatſoever certainty is required in an indictment, the ſame at leaſt is neceſſary alſo in an information; and conſequently as all the material parts of the crime muſt be preciſely found in the one, ſo muſt they be preciſely alleged in the other, and not by way of argument or recital. 2 *Haw.* 260, 1.

Not aided by the ſtatutes of jeofails.

And therefore the ſtatutes of jeofails (from *J' ay faille*, I have failed), or the ſtatutes that do remedy overſights

ſights in pleading, extend not to informations. *Wood, b.* 4. *c.* 4.

If an information contain ſeveral offences againſt a ſtatute, and be well laid as to ſome of them, but defective as to the reſt, the informer may have judgment for ſo much as is well laid. 2 *Haw.* 266. Information good as to part.

Generally, *if a* (common) *informer ſhall willingly delay his ſuit, or diſcontinue, or be nonſuit, or ſhall have a verdict or judgment againſt him, he ſhall pay coſts to the defendant.* 18 El. c. 5. ſ. 3. Coſts againſt the plaintiff.

And in the court of king's bench particularly, *if the defendant ſhall appear and plead to iſſue, and the proſecutor ſhall not at his own coſts, within a year after iſſue joined, procure the ſame to be tried, or if a verdict paſſes for the defendant, or the informer procure a* noli proſequi *to be entred, the ſaid court of king's bench may award the defendant his coſts, unleſs the judge ſhall certify that there was a reaſonable cauſe for exhibiting ſuch information. And if the informer ſhall not, in three months after ſuch coſts taxed, and demand made, pay the ſame, the defendant ſhall have the benefit of the recognizance above mentioned, to compel him thereunto.* 4 & 5 W. c. 18. ſ. 2.

Unleſs the judge ſhall certify] *E.* 13 *G.* 2. *K.* and *Woodfall.* Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for coſts on this ſtatute which provides, that in caſes where the defendant is acquitted, the court is authoriſed to award coſts to the defendant, unleſs the judge ſhall at the trial certify there was a reaſonable cauſe. In this caſe, no ſuch certificate was aſked; but it was inſiſted on for the proſecutor, that it was diſcretionary in the court. The chief juſtice certified *ore tenus* that it was a verdict againſt evidence; but then he and all the others held, that it was now too late to inquire into the probable cauſe; and that it was not diſcretionary, but compulſory upon them, where there was no certificate. So the defendant had his coſts. *Str.* 1131.

But it ſeems to be in a great meaſure ſettled, that an *informer* upon a popular ſtatute ſhall in no caſe whatſoever have his coſts, unleſs they be expreſsly given him by ſuch ſtatute; for it is certain, that he cannot recover them by the common law, for that doth not give coſts in any caſe: neither can he recover them by the ſtatute of *Glouceſter*, which gives the demandant his coſts in all Coſts againſt the defendant.

caſes wherein he ſhall recover his damages: for this ſeems to ſuppoſe ſome damage to have been done to the demandant in particular, which cannot be ſaid in any popular action. But it ſeems agreed, that an action on a ſtatute *by the party grieved*, for a certain penalty given by ſuch ſtatute, is within the ſtatute of *Glouceſter*, becauſe ſuch penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of coſts, it would be in moſt caſes in vain for him to ſue for it, ſince the coſts of ſuit would exceed it. But it is ſaid, that no coſts ſhall be recovered in an action on a ſtatute, which gives no *certain* penalty to the party grieved, but only his *damages* in general, if ſuch a ſtatute be introductive of a new law, and give a remedy in a point not remediable at the common law: but there is not that inconvenience in this caſe, as in the former; becauſe no certain ſum being ſpecified, the jury may give the plaintiff a full ſatisfaction by way of damages. 2 *Haw.* 274.

Informer compounding.

No (common) *informer ſhall compound or agree with the defendant, but after anſwer made in court, nor after anſwer, but by the order or conſent of the court; on pain of being ſet on the pillory, in ſome market town next adjoining, in open market, for two hours, and of being diſabled to be informer on any penal ſtatute, and alſo of forfeiting* 10l. *half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the juſtices of aſſize, and juſtices of the peace in ſeſſions, may hear and determine all offences againſt this act.* 18 El. c. 5. ſ. 4.

Colluſive action.

And if the defendant plead a recovery by a former action, which former action ſhall be found to have been colluſive; the plaintiff ſhall recover, as though no ſuch action before had been had: and if the defendant ſhall be convicted of ſuch colluſion, he ſhall be impriſoned two years, by proceſs of capias *and outlawry, and that as well at the king's ſuit, as of every other that will ſue.* 4 H. 7. c. 20.

And no releaſe of any common perſon, to any ſuch party, whether before or after any action popular, or indictment of the ſame commenced or made, hanging the ſame action, ſhall be available to ſurceaſe the ſaid action, indictment, proceſs, or execution. Id.

Form

Form of an information *qui tam*.

Weſtmorland. BE *it remembred, that* A. I. *of* ——— *in the county of* ——— *gentleman, who as well for our lord the now king as for himſelf doth proſecute, cometh before the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at their general quarter ſeſſions of the peace holden at* —— *in and for the ſaid county, the* —— *day of* —— *in the* ——— *year of the reign of* ——— *in his proper perſon; and as well for the ſame lord the king, as for himſelf, giveth the court here to underſtand and be informed, That* A. O. *late of* ——— *in the county aforeſaid yeoman, on the* —— *day of* —— *in the year aforeſaid at* —— *aforeſaid, in the county aforeſaid, not regarding the laws and ſtatutes of our ſaid lord the king, but intending to* ——— *with force and arms* [Here inſert the offence with the ſame preciſion as in an indictment] *againſt the form of the ſtatute in that caſe made and provided: Whereupon the aforeſaid* A. I. *as well for the ſaid lord the king, as for himſelf, prayeth the advice of this court in the premiſes; and that the aforeſaid* A. O. *may forfeit the ſum of* —— *according to the form of the ſtatute aforeſaid; and that he the ſame* A. I. *may have one moiety thereof, according to the form of the ſtatute aforeſaid; and alſo that the aforeſaid* A. O. *may come here into this court, to anſwer concerning the premiſes; and there are pledges of proſecuting* John Doe *and* Richard Roe. *And hereupon it is commanded to the ſaid* A. O. *that all other things omitted, and all excuſes laid aſide, he be in his proper perſon at the next general quarter ſeſſions of the peace to be holden for the ſaid county, to anſwer as well to the ſaid lord king, as to the ſaid* A. I. *who as well for the ſaid lord the king as for himſelf, doth proſecute of and concerning the premiſes, and further to do and receive what the ſaid court ſhall conſider in this behalf.*

Ingroſſing. See **Foreſtalling.**
Inns, Innkeepers. See **Alehouſes.**
Inſolvent Debtors. See **Debtors.**

Inrolment.

NO manors, lands, tenements, or hereditaments ſhall paſs from one to another, whereby an eſtate of inheritance or freehold ſhall be made or take effect in any perſon, or any uſe thereof to be made by reaſon only of any bargain and ſale thereof, except the ſame bargain and ſale be made by writing indented, ſealed, and inrolled in one of the king's courts of record at *Weſtminſter*; or elſe within the county where the lands lie, before the *cuſtos rotulorum*, and two juſtices, and the clerk of the peace, or two of them at the leaſt, whereof the clerk of the peace to be one; the ſame inrolment to be made in ſix months after the date of the writings: Paying, where the land exceeds not 40s. a-year, 2s. to wit, 12d. to the juſtices, and 12d. to the clerk; and where it exceeds 40s. a year, then paying 5s. half to the juſtices, and half to the clerk; and the clerk of the peace ſhall inrol and ingroſs the ſame on parchment: The ſame to be kept amongſt the records of the county. 27 *H.* 8. *c.* 16.

In the counties of *Lancaſter*, *Cheſter*, and *Durham*, they may be inrolled in the reſpective courts there, or at the aſſizes. 5 *El. c.* 26.

The inrolling of deeds and wills of papiſts, belongs to title Popery.

Iron and ſteel.

Not to be exported.

AFTER 1 *Aug.* 1785, No perſon ſhall export, or load, pack, or put on board any ſhip in order to be exported (except to *Ireland*), or load on board any boat or veſſel; or bring to any quay, wharf, or place for the purpoſe of exporting the ſame, any tools or utenſils which are or may be uſed, for preparing, working, finiſhing or completing the iron or ſteal manufactures of this kingdom, or any model, or plan of any ſuch tools or utenſils, or any part thereof; nor ſhall collect, obtain, make, or apply for any ſuch tools, utenſils, or implements, or any part thereof; or any ſuch model or plan, with intent to export the ſame, on forfeiture thereof, together with the packages, and all other goods packed therewith, which may be ſeized by any officer of the cuſtoms: And on

complaint made on the oath of one witneſs, before one juſtice, he may iſſue his warrant to bring the perſon complained of before him or ſome other juſtice; and if ſuch perſons ſhall not give ſuch account of the uſe or purpoſe to which the ſame are intended to be appropriated, as ſhall be ſatisfactory to the juſtice, he ſhall detain ſuch goods, and bind ſuch perſon to appear at the next aſſizes or quarter ſeſſions, with reaſonable ſureties; and if he ſhall neglect or refuſe to give ſuch ſecurity, the juſtice may commit him to the common gaol or houſe of correction, until the next aſſizes or quarter ſeſſions, and until he ſhall be delivered by due courſe of law.—And in caſe ſuch perſon ſhall be convicted, he ſhall forfeit 200 l. and ſhall be impriſoned 12 months without bail, and until the forfeiture ſhall be paid. 25 *G.* 3. *c.* 67. *ſ.* 1, 2.

And by 26 *G.* 3. *c.* 89. After reciting, that ſuch general prohibition of the exportation of tools and utenſils was productive of inconvenience, &c. It is therefore enacted, that after 10 *July* 1786, it ſhall be lawful to export any tools or utenſils made uſe of in the iron or ſteel manufactures, which might have been legally exported before the paſſing of the aforeſaid act, except thoſe hereafter mentioned (viz.) rollers, either plain, grooved, or of any other form or denomination, of caſt iron, wrought iron, or ſteel, for the rolling of iron, or any ſort of metals, and frames, beds, pillars, ſcrews, pinions, and each and every implement, tool, or utenſil thereunto belonging; rollers, ſlitters, frames, beds, pillars, and ſcrews, for ſlitting mills; preſſes of all ſorts in iron, ſteel, or other materials, which are uſed with a ſcrew exceeding one inch and a half in diameter; or any parts of theſe ſeveral articles, or any model of any of the utenſils or machines aforeſaid, or any part thereof; and all ſorts of utenſils, engines, or machines uſed in the caſting or boring of cannon, or any ſort of artillery, or any parts thereof, or any model of tools, utenſils, engines, or machines uſed for the like purpoſe; hand ſtamps, dog-head ſtamps, pulley ſtamps, hammers, and anviles for ſtamps, preſſes of all ſorts called *cutting out preſſes*, beds and punches to be uſed therewith, piercing preſſes of all ſorts, beds and punches to be uſed therewith, either in parts or pieces, or fitted together; ſcoring or ſhading engines; preſſes for horn buttons, dies for horn buttons, rolled metal with ſilver thereon, parts of buttons not fitted up into buttons, or in an unfiniſhed ſtate; engines for chaſing, ſtocks for caſting buckles, buttons, and rings;

Exception.

Exceptions by 26 G. 3. ſ. 89.

rings; die-sinking tools of all sorts, tools for pinching of glass; engines for covering of whips; bars of metal covered with gold or silver; burnishing stones, commonly called *blood stones*, either in the rough state or finished for use. *s.* 1. 3.

Person having certain articles in his possession with intent to export.

And if any person shall have in his possession with intent to export the same, any wire moulds for making paper; wheels made of metal, stone or wood, for cutting, roughing, smoothing, polishing, and engraving glass; purcellas, pincers, sheers, and pipes, used in blowing glass; potters' wheels and lathes for plain, round, and for engine turning tools, used by sadlers, harness-makers, and bridle-makers, namely cantle strainers, side-strainers, point-strainers, creasing-irons, screw creasers, wheel-irons, seat-irons, pricking-irons, bolster-irons, clams and head-knives; the said former act shall be extended to exporters and possessors of the tools and utensils herein described, as fully, to all intents and purposes, as if the same were re-enacted in this act. *s.* 2. (*a*)

Penalties.

All penalties are to be recovered in the courts at *Westminster*, and to be sued for within 12 months. 25 *G.* 3. *c.* 67. *s.* 7, 8.

Judgment.

Judgments certain.

OF judgments, some are fixed and stated, as in cases of *treason*, *felony*, *præmunire*, and *misprision*; the particular forms of which may be seen under their respective titles.

Judgments variable.

Others are discretionary and variable, according to the different circumstances of each case; Thus for crimes of an infamous nature, such as petit larceny, perjury, or forgery at common law, gross cheats, conspiracy, not requiring a villanous judgment, keeping a bawdy-house, bribing witnesses to stifle their evidence, and other offences of the like nature; it seems to be in a great measure left to the prudence of the court to inflict such corpo-

---

(*a*) The above act 26 *G.* 3. *c.* 89. was in force only till the end of the then next session of parliament, but the same hath been by several acts continued, and by 35 *G.* 3. *c.* 38. *s.* 4. is made perpetual.

ral

ral puniſhment, and alſo ſuch fine, and binding to the good behaviour for a certain time, as ſhall ſeem moſt proper and adequate to the offence. 1 *Haw.* 445.

Judgment in the offender's abſence.

The court may aſſeſs a fine, but cannot award any corporal puniſhment againſt a defendant, unleſs he be actually preſent in court. 2 *Haw.* 446.

Judgment of a joint fine.

Where there are ſeveral defendants, a joint award of one fine againſt them all, is erroneous; for it ought to be ſeveral againſt each defendant: for otherwiſe, one who hath paid his proportionable part might be continued in priſon till all the others have alſo paid theirs, which would be in effect to puniſh him for the offence of another. *Id.*

Judgment in mitigation of fines.

A fine is under the power of the court, during the term in which it is ſet; and may be mitigated as ſhall be thought proper: but after the term, it admits of no alteration. *Id.*

Judgment againſt the verdict.

A judgment contrary to the verdict is void. *Read.* Judgm.

Judgment by particular ſtatutes.

By many ſtatutes peculiar puniſhments are appointed for ſeveral offences, as pillory, ſtocks, impriſonment, and the like; and in all theſe caſes, no room is left for the juſtices' diſcretion, for they ought to give judgment, and to inflict the puniſhment in all the circumſtances thereof, as ſuch ſtatutes do direct. *Dalt. c.* 188.

Jurors.

NOTE; The ſtatutes of the 4 & 5 *W. c.* 24. and 7 & 8 *W. c.* 32. hearafter following, were at firſt but temporary; but are referred to, and as it were adopted by the 3 *G.* 2. *c.* 25. Which act of the 3 *G.* 2. *c.* 25. is made perpetual by the 6 *G.* 2. *c.* 37. And all the ſaid three acts of 4 & 5 *W.* 7 & 8 *W.* and 3 *G.* 2. are required to be read at every *Midſummer* ſeſſions.

Trial by juries is the *Engliſhman*'s birth right, and is that happy way of trial, which notwithſtanding all revolutions of times, hath been continued beyond all memory to this preſent day; the beginning whereof no hiſtory ſpecifies, it being contemporary with the foundation of this ſtate, and one of the pillars of it, both as to age and conſequence. *Tr. p. Pais*, 3. *Dalt. c.* 186.

Con-

Concerning which I will treat in the order following:

I. Who may or may not be jurors.
II. Of making and returning lists of jurors.
III. Of the sheriff's summoning and returning jurors.
IV. Of the challenge of jurors.
V. Of the demeanor of jurors in giving their verdict.
VI. Of the indemnity and punishment of jurors.

I. Who may or may not be jurors.

Grand Jurymen.

Mr. *Hawkins* says, it doth not seem to be any where holden, that none but freeholders ought to be returned on a grand jury. 2 *Haw.* 216, 217.

But in another place he says, that by the common law, every grand juryman ought to be a freeman. 1 *Haw.* 215.

And L. *Hale* says, touching the yearly value of the estate of a grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 *H. H.* 155.

But in *Yorkshire*, they ought to have 80l. a-year, freehold or copyhold. 7 & 8 *W. c.* 32. *s.* 8.

Also a grand juryman must be a lawful liege subject; and consequently, neither under attainder of any treason or felony, or an alien, nor outlawed, whether for a criminal matter, or as some say, in a personal action; and from hence it seems, that any one who is under a prosecution for any crime, may by the common law, before he is indicted, challenge any of the persons returned on the grand jury for the defect of any of the qualifications aforesaid. 1 *Haw.* 215.

The grand jury ought not to consist of an indefinite number; for no more ought to be sworn than twenty-three. For if a number amounting to two full juries or more, should be sworn, it might happen that a complete jury of twelve might find a bill to be true, though other twelve or more of the same jury might reject it as untrue; which would be inconvenient and absurd. *Burr. Mansf.* 1088.

Jurymen in the courts at Westminster.

In the courts at *Westminster*, and city of *London*, the jurors should be householders within the city, and have lands, tenements, or personal estates, to the value of 100l. 3 *G.* 2. *c.* 25. *s.* 19, 20.

And

And by the 4 *G.* 2. *c.* 7. *ſ.* 3. Leaſeholders in the county of *Middleſex*, where the improved rents or value ſhall amount to 50 l. a-year, over and above the ground rent or other reſervations, ſhall be liable to ſerve on juries.

At the aſſizes or ſeſſions in the country, every juror, other than ſtrangers *per medietatem linguæ* in *England*, ſhall have in his own name, or in truſt for him, within the county, 10 l. a-year, and in *Wales* 6 l. a-year, above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demeſne, or in rents, or in all or any of them, in fee ſimple, fee tail, or for the life of themſelves, or ſome other perſon; and if any of a leſſer eſtate be returned, he may be diſcharged upon challenge, or on his own oath. 4 & 5 *W.* *c.* 24. *ſ.* 15. 3 *G.* 2. *c.* 25. *ſ.* 20. At the aſſizes or ſeſſions.

And by the 3 *G.* 2. *c.* 25. *ſ.* 18. Perſons having an eſtate in poſſeſſion in land in their own right, of 20 l. a-year above the reſerved rent, being held by leaſe for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, ſhall be liable to ſerve on juries.

From hence it appears, that lands *freehold*, *copyhold*, *ancient demeſne*, or *leaſehold*, do render perſons liable to ſerve on juries. And ſome have thought that all lands are included under theſe denominations. And in *Coke's Copyholder*, *p.* 14. it is ſaid, that what land ſoever is not copyhold, is freehold. And in *Calthr.* 41. it is ſaid, that copyhold lands may differ in name, but not in nature; for although copyhold lands be ſpecially ſo called, becauſe holden by copy of court roll, and cuſtomary lands by ſome ſpecial cuſtom; yet they are all holden in one general kind, that is, by cuſtom, and the diverſity of their names doth not alter the nature of their tenure. Nevertheleſs, although all copyhold lands are cuſtomary, yet all cuſtomary lands are not copyhold, and conſequently, as ſuch, do not qualify a man to ſerve on juries. Of which kind of cuſtomary lands not being copyhold, the greater part of the county of *Weſtmorland* in particular doth conſiſt. For which cauſe (and by reaſon of the number of perſons diſqualified by being quakers) the jurors in that county are in compariſon but few. To remedy which inconvenience, it ſeemeth not unreaſonable, that in the ſtatutes limiting the qualification of jurors, amongſt other denomination of tenure, the word *cuſtomary* ſhould be inſerted; for why ſhould a copyholder of 10 l. a-year be obliged

to ſerve, and a cuſtomary tenant of 100 l. a-year be exempted?

Jurors on trials of foreigners.

As to the ſtrangers *per medietatem linguæ* above-mentioned, it is enacted by the 28 *Ed.* 3. *c.* 13. that in inqueſts to be taken amongſt aliens and denizens, before any judges, one half of the inqueſt ſhall be denizens, and the other half aliens, if ſo many there be in the place who are not parties; if not, then ſo many as there are.

And by the 27 *Ed.* 3. *ſt.* 2. *c.* 8. Before the mayor of the ſtaple, if both parties be ſtrangers, the inqueſt ſhall be taken by ſtrangers; if both be denizens, by denizens; if the one party be denizen, and the other alien, half of the jury ſhall be denizens, and half aliens.

And theſe aliens need not have any qualification by their eſtate. 8 *H.* 6. *c.* 29.

But it ſeems that the *Engliſh* half of the jury ought to have eſtates of the ſame value as in other caſes. 2 *Haw.* 419.

But by the 13 & 14 *C.* 2. *c.* 11. *ſ.* 11. In actions concerning tonnage and poundage, or ſhips or goods to be forfeited by reaſon of unlawful importation or exportation, there ſhall not be any party jury, but ſuch only as are natural born ſubjects.

Jurors in towns corporate.

In towns corporate: Trials of felons ſhall be by men worth 40 l. in goods, though they have no freehold. 23 *H.* 8. *c.* 13.

And in 3 *Salk.* 81. it is ſaid, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the ſtatutes which require jurors to be of ſuch and ſuch ſufficiency, do generally except cities, boroughs, and towns corporate.

In the torn.

In the torn: Jurors ſhall have 20 s. a-year freehold; or 26 s. 8 d. copyhold. 1 *R.* 3. *c.* 4.

In the leet.

In the leet: It is ſaid by ſome books, that any perſon happening to be preſent at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the ſteward to be ſworn, whether he be reſident within the precincts of the leet, or not: by which it ſeems to be implied, that any perſon whatſoever is capable of being put upon the jury in a court leet. 2 *Haw.* 69.

On the coroner's inqueſt.

The coroner's jury, upon inqueſt taken before him, are to be of the neighbouring towns; but no qualification by eſtate is required by any ſtatute. 2 *H. H.* 152.

Jurors to inquire of the concealments of other inqueſts, ſhall have lands of 40s. a-year. 3 *H.* 7. *c.* 1. — On other jurors concealing preſentments.

Jurors to inquire of forcible entry or detainer, ſhall have lands or tenements of 40s. a-year. 8 *H.* 6. *c.* 9. — On inquiries of forcible entry.

Jurors to inquire of riots, ſhall have 20s. a-year, charter land, or freehold; or 26s. 8d. copyhold. 19 *H.* 7. *c.* 13. — On inquiries of riots.

In *Yorkſhire:* No perſon having 150l. a-year, of ſuch eſtate as will qualify him to ſerve on juries, ſhall be ſummoned to the ſeſſions; but only perſons leſs able to bear the expence of attending the aſſizes. 1 *An. ſt.* 2. *c.* 13. *ſ.* 3. And if he doth ſerve at the ſeſſions it ſhall not ſatisfy his turn, but he ſhall attend the aſſize nevertheleſs. 10 *An.* *c.* 14. *ſ.* 6. — In Yorkſhire.

Young men under 21 years of age ſhall not ſerve upon juries. 7 & 8 *W.* *c.* 32. *ſ.* 4. — Perſons under age.

Old men above 70, perſons continually ſick, or being diſeaſed at the time of the ſummons, or not dwelling in the county, ſhall not be put in juries of petit aſſizes; on pain of the ſheriff paying damages to the party grieved, and being amerced to the king. 13 *Ed.* 1. *ſt.* 1. *c.* 38. — Perſons above age, infirm, abſent.

And the equity of this ſtatute, and alſo the reaſon of the thing, ſeem plainly ſo far to extend to grand juries, that if it ſhall appear, that any of the perſons above-mentioned be returned on a grand jury, the court will eaſily excuſe their non-appearance. But it ſeems clear, that any ſuch perſons being returned on a grand jury, may lawfully ſerve upon it if they think fit. 2 *Haw.* 216.

The jury ought to be men; yet there ſhall be a jury of women, to try if a woman be enſient, upon the writ *de ventre inſpiciendo*. *Tr. p. Pais*, 86. — In what caſe women ſhall be jurors.

By the 5 *H.* 8. *c.* 6. and 18 *G.* 2. *c.* 15. Freemen of the company of ſurgeons in *London* are exempted from ſerving upon juries. — Surgeons.

And by the 6 & 7 *W.* *c.* 4. Apothecaries, within *London* and ſeven miles thereof, being free of the company; and country apothecaries, who have ſerved ſeven years apprenticeſhip, —— ſhall be exempted from ſerving on juries, and their return ſhall be void, unleſs they ſhall voluntarily conſent to ſerve. 6 & 7 *W.* *c.* 4. — Apothecaries.

Clergymen cannot be impannelled upon juries. *Lamb.* 396. — Clergymen.

Diſſenting teachers, qualified under the toleration act, are exempted from ſerving on juries. 1 *W.* *c.* 18. *ſ.* 11. 19 *G.* 3. *c.* 44. — Diſſenting teachers.

Alſo quakers. 7 & 8 *W.* *c.* 34. *ſ.* 6. — Quakers.

By

Writs of exemption.

By the 4 & 5 *W.* c. 24. *ſ.* 21. No writ *de non ponendis in aſſiſis & juratis*, ſhall be granted, unleſs upon oath made, that the ſuggeſtions upon which it is granted, are true.

And the jurors ought to come in perſon and claim their privilege; for the ſheriff cannot return it. *Tr. p. Pais*, 87.

II. Of making and returning liſts of jurors.

Precepts to the high and petty conſtables.

The juſtices at *Midſummer* ſeſſions, ſhall iſſue forth their warrants (A) under the hands and ſeals of two or more of them, to the high conſtables, requiring them to iſſue forth their precept to the petty conſtables, thereby directing and requiring them to make and return true liſts in writing, of the names and places of abode of all perſons within their reſpective conſtablewicks qualified to ſerve on juries, with their titles and additions, between the ages of 21 and 70. High conſtable failing to iſſue his precept, ſhall forfeit 10 l. on conviction at the aſſizes or ſeſſions. 7 & 8 *W.* c. 32. *ſ.* 4. 8 & 9 *W.* c. 10. 3 & 4 *An.* c. 18. *ſ.* 5.

Petty conſtables may inſpect the rates.

The petty conſtables, on requeſt to any pariſh officer, who ſhall have in his cuſtody any of the rates for the poor or land tax, ſhall have free liberty to inſpect ſuch rates, and take from thence the names of freeholders, copyholders, or other perſons qualified to ſerve on juries, dwelling within their reſpective precincts. 3 *G.* 2. c. 25. *ſ.* 1.

Liſts to be put upon the church door.

And ſhall yearly, 20 days at leaſt before *Michaelmas*, upon two or more *Sundays*, fix on the door of the church, chapel, and every other publick place of religious worſhip, an exact liſt of perſons intended to be returned; and ſhall leave at the ſame time a duplicate thereof, with a churchwarden or overſeer, to be peruſed by the pariſhioners without fee, to the end that notice may be given of perſons qualified who are omitted, or of perſons inſerted by miſtake who ought to be omitted. *Id.*

Penalty on the petty conſtable, for inſerting perſons wrongfully.

And if ſuch petty conſtable ſhall wilfully omit any perſon who ought to be inſerted, or inſert any one who ought to be omitted, or ſhall take any reward for omitting or inſerting any perſon, he ſhall forfeit 20 s. on conviction before one juſtice, on confeſſion, or oath of one witneſs; half to the informer, and half to the poor of the pariſh or place for which the liſt is returned: if not paid in five days, to be levied by diſtreſs. And ſuch juſtice ſhall, in writing under his hand, certify the ſame to the next ſeſſions;

who

who ſhall direct the clerk of the peace to inſert or ſtrike out the name of ſuch perſon ſo inſerted or omitted wrongfully. *ſ.* 2.

The ſaid petty conſtables, at *Michaelmas* ſeſſions, ſhall deliver in the liſts in open court. 7 & 8 *W.* *c.* 32. *ſ.* 4. Liſts to be delivered in at the ſeſſions.

Or inſtead of this, after they have completed their liſts, it ſhall be ſufficient if they ſubſcribe the ſame in the preſence of one juſtice, and at the ſame time atteſt the truth thereof upon oath to the beſt of their knowledge or belief: And then the ſaid liſt, being firſt ſigned by the juſtice, and ſubſcribed as aforeſaid, ſhall be delivered by the ſaid petty conſtables, to the high conſtables, who ſhall deliver in the ſame at the ſaid ſeſſions in open court, atteſting at the ſame time upon oath the receipt of ſuch liſts from the petty conſtables, and that no alteration hath been made therein ſince their receipt thereof. 3 *G.* 2. *c.* 25. *ſ.* 7. Or to the high conſtable.

The conſtable failing to make return ſhall forfeit 5l. to the king, to be recovered by bill, plaint, or information. 7 & 8 *W.* *c.* 32. *ſ.* 4. Penalty on petty conſtables for not returning liſts.

And if any perſon, not qualified, ſhall find his name mentioned in ſuch liſt, and the perſon required to make ſuch liſt ſhall refuſe to omit him, or think it doubtful whether he ought to be omitted; the juſtices at the ſeſſions to which the liſts ſhall be returned, on ſatisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be ſtruck out, or omitted to be entered in the book. 3 *G.* 2. *c.* 25. *ſ.* 1. Perſons not qualified, how diſcharged.

The juſtices ſhall then cauſe the liſts to be fairly entered in a book by the clerk of the peace, to be by him provided and kept for that purpoſe amongſt the records of the ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 4. Liſts to be entred by the clerk of the peace;

Clerk of the peace neglecting his duty herein, ſhall forfeit 20l. to him who ſhall ſue by indictment at the ſeſſions. 3 *G.* 2. *c.* 25. *ſ.* 2. on pain of 20l.

Duplicates of the ſaid liſts, when delivered in at the ſeſſions, and entered in ſuch book to be kept by the clerk of the peace for that purpoſe, ſhall, during the ſaid ſeſſions, or within ten days after, be delivered by the clerk of the peace to the ſheriff. *Id.* Duplicates thereof to be delivered to the ſheriff.

And the ſheriff ſhall immediately take care, that the names ſhall be entered alphabetically, with their additions and places of abode, in a book to be kept by him for that purpoſe. *Id.* The ſame to be entred by the ſheriff.

Sheriff ſhall return none but thoſe in the duplicates.

And if the ſheriff ſhall ſummon and return any perſon to the aſſizes, whoſe name is not in the duplicates, the judge may on examination in a ſummary way, fine him not exceeding 10l. nor leſs than 40 s. *ſ.* 3.

III. Of the ſheriff's ſummoning and returning jurors.

Sheriff to ſummon jurors to the ſeſſions.

By a clauſe in the commiſſion of the peace, it is ſaid, ——— We command our ſheriff, that at certain days, which you (the juſtices) ſhall make known to him, he cauſe to come before you ſo many and ſuch good and lawful men of his bailiwick (as well within liberties as without) by whom the truth ſhall be the better known and inquired into.

Whether the ſeſſions may order a jury to be returned immediately.

It ſeems that juſtices of the peace may not order a jury to be returned immediately nor on the ſame day, for the trial of a priſoner arraigned before them, as juſtices of gaol delivery may, unleſs the crime amount to felony, or the party conſent to be tried immediately. 2 *Haw.* 406.

Whether by award of the court without precept.

Alſo it ſeems that a jury may not regularly be returned before juſtices of the peace in their ſeſſions, by a bare award of the court, as before juſtices of gaol delivery; but that there ought to be a particular precept to the ſheriff for that purpoſe. 2 *Haw.* 405, 406.

How they may do the ſame in caſes of felony.

But in caſes of felony it is agreed (4 *Inſt.* 164.) and is the uſual practice, after the priſoners are arraigned and have pleaded to the country, for the juſtices to iſſue a precept to the ſheriff, in nature of a *venire facias*, which may bear teſte the ſame day that the priſoners plead, commanding the ſheriff to return 24 jurors, to try the iſſue upon ſuch a day; or they make it returnable the ſame day that the priſoner pleads, as at the hour of one in the afternoon, or the like; and this precept muſt be in the name, and under the ſeals of the juſtices, or two of them (1 *Q.*), and not barely upon the award of the roll. 2 *H. H.* 261, 262.

Form of the venire facias.

The writ of *venire facias* by the ſtatute of the 4 & 5 *W.* *c.* 24. ſhall be after this form: *The king*, &c. *We command*, &c. *that you cauſe to come before*, &c. *twelve free and lawful men of the vicinage of A. every of whom ſhall have* 10*l.* *of land, tenements, or rents, by the year, at leaſt; by whom*, &c. *and who neither*, &c. ſ. 15. (B.)

Why the jurors ſhall be returned of the neighbourhood.

The reaſon why they are required to come from the vicinage is, for that the neighbours are preſumed

to know what is done in the neighbourhood. 1 *Inſt.* 158.

But yet this is not neceſſarily required; for they of one ſide of the county, are, by law of the neighbourhood, to try an offence of the other ſide of the county. 2 *H. H.* 264.

And by the 4 *An. c.* 16. *ſ.* 6, 7. and 24 *G.* 2. *c.* 18. *ſ.* 3. to prevent challenges for default of hundredors, every *venire facias* for the trial of an iſſue in any action in the courts at *Weſtminſter*, or in any action or information on a penal ſtatute, ſhall be awarded of the body of the county where ſuch iſſue is triable.

By the late wool act 28 *G.* 3. *c.* 38. *ſ.* 74. the jury is to be ſummoned out of any county *but that wherein the fact ſhall be committed.*

How many ſhall be returned and ſerve.

And although the words of the writ be twelve, yet by the ancient courſe, the ſheriff muſt return 24, for the expedition of juſtice; for if twelve only ſhould be returned, there would ſeldom a full jury appear; and in this caſe uſage and cuſtom makes the law. 2 *H. H.* 263. *Read.* Jur.

By the general precept that iſſues before a ſeſſion is, to return 84, and commonly the ſheriff returns upon that precept 48. 2 *H. H.* 263.

But in iſſues of *niſi prius*, the ſheriff ſhall, upon his return of the writ of *venire facias juratores* (unleſs in cauſes intended to be tried at bar, or where a ſpecial jury ſhall be appointed) annex a panel to the ſaid writ, containing the chriſtian and ſurname, additions and places of abode, of a competent number of jurors, the names of the ſame perſons to be inſerted in the panel annexed to every *venire facias*, for the trial of all iſſues at the ſame aſſizes; which number of jurors ſhall not be leſs than 48 in any county, nor more than 72, unleſs the judges ſhall order otherwiſe. And the writs of *habeas corpora juratorum*, or *diſtringas*, ſubſequent to ſuch writ of *venire facias juratores*, need not have inſerted in the bodies of ſuch writs the names of all the perſons contained in ſuch panel, but it ſhall be ſufficient to inſert in the mandatory part of ſuch writs reſpectively, *the bodies of the ſeveral perſons named in the panel annexed to this writ*, or words of the like import, and to annex to ſuch writs reſpectively panels, containing the ſame names as were returned in the panel to ſuch *venire facias*, with their additions and places of abode, that the parties concerned in any ſuch trials may have timely notice of the jurors who are to

ſerve at the next aſſizes, in order to make their challenges to them, if there be cauſe: and the perſons named in ſuch panels ſhall be ſummoned at the next aſſizes, and no other. 3 *G.* 2. *c.* 25. *ſ.* 8. It is true, this gives them an opportunity of knowing how to make their challenges; but it alſo gives them an opportunity to another purpoſe, namely, of labouring the jurors, ——— a practice which cannot be too much diſcouraged.

In *Wales*; the ſheriff ſhall ſummon out of every hundred or commote, not leſs than ten, nor more than fifteen; unleſs the judges ſhall order otherwiſe. 3 *G.* 2. *c.* 25. *ſ.* 9.

And in the counties palatine; the ſheriff ſhall ſummon not leſs than 48, nor more than 72 (unleſs the judges order otherwiſe); and ſhall eight days before the courts be held, cauſe a liſt to be made of the perſons ſummoned, which ſhall be hung up in the ſheriff's office, to be inſpected by any perſon. 3 *G.* 2. *c.* 25. *ſ.* 10.

Upon the grand jury; there may be, and uſually are, more than 12: but if there be 12 aſſenting, though others diſſent, it is not neceſſary for the reſt to agree. 2 *H. H.* 161.

But upon a trial by a petit jury; it can be by no more nor leſs than 12, and all aſſenting to the verdict. *Id.*

In the county of *York*; only one panel of 48 freeholders and copyholders, and no more, ſhall be returned to ſerve on the grand inqueſt at the aſſizes; and at the ſeſſions, not above 40, either upon the grand inqueſt, or other ſervice there. 7 & 8 *W. c.* 32. *ſ.* 8.

Time and manner of ſummons.

Every ſummons of jurors ſhall be made by the ſheriff, his officer, or lawful deputy, ſix days before at the leaſt, (and in *Wales* eight days before, and in the counties *palatine* 14 days before, 3 *G.* 2. *c.* 25. *ſ.* 9, 10.) ſhewing to every perſon ſo ſummoned the warrant under the ſeal of the office wherein they are appointed to ſerve; and if ſuch juror be abſent from the place of his habitation, notice of the ſummons ſhall be given by leaving a note thereof in writing, under the hand of ſuch officer, at the dwelling-houſe of ſuch juror, with ſome perſon there inhabiting in the ſame. 7 & 8 *W. c.* 32. *ſ.* 5.

Penalty on the ſheriff or bailiff neglecting or miſbehaving.

If the ſheriff, his deputy or bailiff, neglect their duty herein, or excuſe any perſon for favour or reward; he ſhall forfeit 20*l.* to him who ſhall ſue. 7 & 8 *W. c.* 32. *ſ.* 6. Or, he may be fined 10*l.* or under, by the judge of aſſize. 3 *G.* 2. *c.* 25. *ſ.* 6.

And no bailiff, or other officer, ſhall ſummon any perſon, other than ſuch whoſe name is ſpecified in a mandate ſigned by the ſheriff or under ſheriff, and directed to ſuch bailiff or other officer; on pain of 10l. on a ſummary conviction before the judge of aſſize. 3 *G.* 2. *c.* 25. *ſ.* 6.

In the caſe of *K.* and *Whitaker*, *H.* 18 *G.* 3. The defendant was ſummoning bailiff to the ſheriff of *Middleſex*, and it was his province to ſummon jurors to attend to try cauſes. An attachment was granted againſt him, upon a charge of demanding and receiving money from ſeveral of the inhabitants to excuſe them from ſerving; and for ſummoning ſuch as refuſed to pay him, more frequently than it came to their turn. Being examined upon interrogatories, it appeared to the court upon the report of Sir *James Burrow*, that he admitted having received ſmall ſums from ſeveral individuals: That in ſome years, he had received in the whole about ſixty or ſeventy pounds; and in every year ſomething, though ſometimes not more than twenty pounds. But he denied ever having demanded it, or having ever been guilty of partiality, either in excuſing thoſe who paid him, or in ſummoning thoſe more frequently than he ought to have done who refuſed to pay him. He ſwore he received it only as a Chriſtmas-box, which had been cuſtomary; and in no other view whatever: And poſitively denied, that he ever acted with any partiality in conſequence of its being given or refuſed.—The court thought this to be a very bad practice, and of very evil example: Wherefore they fined him two hundred pounds, and ordered him to be committed till paid. They added, that the ſheriff ſhould be informed of this, and that it ſhould be recommended to him to diſcharge this man from his office of ſummoning bailiff. *Cowper*, 752.

How often they ſhall be ſummoned and ſerve.

No perſons ſhall be returned as jurors at the aſſizes, who have ſerved within one year before in the county of *Rutland*, or two years before in any other county (not being a county of a city or town, and except the counties of *York* and *Middleſex*); on pain that the ſheriff, on examination and proof in a ſummary way, ſhall be fined by the judge not exceeding 5l. 3 *G.* 2. *c.* 25. *ſ.* 4.

And the ſheriff ſhall enter in a book, the names of ſuch perſons as ſhall be ſummoned and ſhall ſerve at the aſſizes, with their additions, and places of abode alphabetically, and the times of their ſervices; and every perſon who hath ſerved, ſhall (on application by him made to the

ſheriff) have a certificate *gratis*, teſtifying his attendance: and the ſaid book ſhall be tranſmitted to the ſucceeding ſheriff. *ſ.* 5.

In the county of *York*; they ſhall not be returned above once in four years, at the aſſizes or ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 7. 10 *An.* *c.* 14. *ſ.* 5.

And if the ſheriff of the county of *York* neglect to keep ſuch book as above, or to enter the names, or to deliver over to his ſucceſſor the entries made for four years next before, or to deliver the certificate *gratis*; he ſhall forfeit 100*l.* half to the king, and half to him that ſhall ſue. 3 & 4 *An.* *c.* 18. *ſ.* 3.

And if he ſhall ſummon or return any juror, who ſhall have ſerved within four years, and ſhall not on producing the certificate diſcharge the ſummons or return, and thereof give notice to the party ſummoned, ſix days before the aſſizes or ſeſſions; he ſhall forfeit 20*l.* to the party, with full coſts. 3 & 4 *An.* *c.* 18. *ſ.* 4.

In the county of *Middleſex*: No perſon ſhall be returned to ſerve as a juror, at any ſeſſions of *niſi prius*, who hath been returned in the two terms or vacations next before; on pain of the ſheriff being fined by the judge 5*l.* or under. 4 *G.* 2. *c.* 7. *ſ.* 2.

And by the 7 & 8 *W.* *c.* 32. *ſ.* 9. The inhabitants of the city and liberty of *Weſtminſter* ſhall be exempted from ſerving in any jury at the ſeſſions for *Middleſex*, by reaſon of their attendance at the courts of *Weſtminſter-hall.*

Jury of view.

In any actions brought in the courts at *Weſtminſter*, where it ſhall appear to the court that it is neceſſary that the jurors ſhall have the view of the place in queſtion, they may order ſpecial writs of *diſtringas* or *habeas corpora* to iſſue, by which the ſheriff ſhall be commanded, to have ſix out of the firſt 12 of the jurors, or ſome greater number of them, at the place in queſtion, ſome convenient time before the trial; who ſhall have the matters in queſtion ſhewn to them by two perſons in the ſaid writs named; and the ſheriff by a ſpecial return upon the ſame, ſhall certify that the view hath been had according to the command of the ſaid writ. 4 *An.* *c.* 16. *ſ.* 8.

And by the 3 *G.* 2. *c.* 25. *ſ.* 14. Where a view ſhall be allowed, ſix or more of the jurors in the panel, who ſhall be conſented to by the parties on both ſides, or their agents, or if they cannot agree, by the proper officer or judges of the court, —— ſhall have the view, and ſhall be firſt ſworn, or ſuch of them as appear, before

any

any drawing, and others ſhall be drawn to make up the number.

The uſual way of granting views now is on the parties entering into a rule by conſent, that in caſe no view be had (as if no jurors attend), or if a view be had by any of the jurors (though not being ſix of the firſt twelve), yet the trial ſhall proceed, and no objection be made on account thereof, or for want of a proper return. *Burr. Manſ.* 256.

Special jury.

Tr. 8 *W.* a rule was made, that when the maſter is to ſtrike a jury, *viz.* 48, out of the freeholders' book, he ſhall give notice to the attornies of both ſides to be preſent; and if the one comes, and the other does not, he that appears ſhall according to the ancient courſe ſtrike out 12, and the maſter ſhall ſtrike out other 12 for him that is abſent. 1 *Salk.* 405.

But if by rule of court, the maſter is ordered to ſtrike a jury, in caſe it be not expreſſed in ſuch rule, that the maſter ſhall ſtrike 48, and each of the parties ſhall ſtrike out 12; the maſter is to ſtrike 24, and the parties have no liberty to ſtrike out any. 1 *Salk.* 405. *M.* 8 *W.*

And the party who ſhall apply for a ſpecial jury to be ſtruck, ſhall pay the fees for the ſtriking ſuch jury, and ſhall not be allowed the ſame on taxation. 3 *G.* 2. *c.* 25. *ſ.* 16. And alſo ſhall pay all the expences occaſioned by the trial of the cauſe, and ſhall have no other allowance for the ſame upon taxation of coſts, than he would be entitled to, if the cauſe had been tried by a common jury; unleſs the judge ſhall in open court certify upon the back of the record, that the ſame was a cauſe proper to be tried by a ſpecial jury. 24 *G.* 2. *c.* 18. *ſ.* 1.

And no perſon who ſhall ſerve upon a ſpecial jury, ſhall be allowed more than the ſum which the judge ſhall think reaſonable, not exceeding one guinea, except in cauſes wherein a view is directed. 24 *G.* 2. *c.* 18. *ſ.* 2.

On a motion for a ſpecial jury, in the caſe of the *King* againſt *Macartney*, *T.* 2 *G.* for the murder of the duke of *Hamilton*, it was held by *Parker* C. J. that there cannot be a ſpecial jury in caſes of *treaſon or felony*; for the party muſt have the advantage of challenging 20 in caſe of felony, and 35 in caſe of high treaſon, without cauſe ſhewn. In caſes of ſpecial juries, there are 48 brought before the maſter, and he takes 24; ſo there cannot be a rule for a good jury, nor for a ſpecial jury, in this caſe of a trial at bar; for the jury will be the ſame with or without ſuch a rule, for they are all good juries in *Middleſex*, and ſo in all

caſes of jurors at the bar; and if there ſhould be a ſpecial jury, it would take away the advantage the party has of challenging peremptorily, although not of ſhewing cauſe. So no rule was made in this caſe, leſt the ſheriff in all other caſes, when there is no ſuch rule, ſhould not return a good jury. 21 *Viner*, 301.

Tales. When a full jury at *niſi prius* (or on indictments, informations, or other actions on penal ſtatutes, 4 & 5 *P. & M. c.* 7.) ſhall not appear, or ſhall be reduced below the number by challenge, the judges on requeſt of the plaintiff (or defendant, 14 *El. c.* 9.) may command the ſheriff to appoint ſo many other able perſons of the county then preſent at the aſſizes, as ſhall make up a full jury; whoſe names ſhall be annexed to the panel. 35 *H.* 8. *c.* 6. *ſ.* 6.

And by the 4 & 5 *W. c.* 24. *ſ.* 18, 19. Theſe tales-men, (*tales de circumſtantibus*,) ſhall have each 5 l. a year, of like eſtate as other jurors; in *Wales* 3 l.

But by the 7 & 8 *W. c.* 32. *ſ.* 3. Tales-men in *niſi prius* ſhall be returned out of the other panels, returned to ſerve at the ſame aſſizes.

And the parties may have their challenges to the tales, as to other jurors. 35 *H.* 8. *c.* 6. *ſ.* 7.

And if ſuch tales-men, after they be called, be preſent, and do not appear, or after appearance do wilfully withdraw themſelves, the judges may fine them; which ſhall be levied as iſſues forfeited by jurors, for default of their appearance at common law, have been accuſtomed to be levied. *ſ.* 9.

By the 4 & 5 *W. c.* 24. *ſ.* 20. No fee ſhall be taken by any ſheriff, clerk of aſſize, or any other perſon, for the return of any tales, or upon the account of any tales returned; on pain of 10 l. half to the proſecutor, and half to the king.

Addition to be returned. No ſheriff ſhall return any juror, without the addition of his dwelling, or ſome other addition by which he may be known; and no extract of iſſues ſhall be delivered out without ſuch addition; on pain of five marks to the king, and five marks to the party grieved; to be recovered in ſeſſions, or elſewhere. 27 *El. c.* 7.

Jurors not appearing. By the common law, jurors returned, and not appearing, ſhall loſe and forfeit the iſſues returned upon them. 35 *H.* 8. *c.* 6.

And if a juryman be called, and (being preſent) refuſe to appear; or, having appeared, withdraw himſelf before he be

be ſworn, the court may ſet a fine upon him at their diſcretion. 2 *H. H.* 309. 35 *H.* 8. *c.* 6. *ſ.* 9.

And by the 29 *G.* 2. *c.* 19. A juror not appearing and ſerving in any court of record within the city of *London*, or in any other city or town corporate, liberty, or franchiſe, after being openly called three times, and oath made of his having been ſummoned, ſhall (without reaſonable excuſe on oath or affidavit to the ſatisfaction of the court,) be fined not more than 40 s. nor leſs than 20 s. and on refuſal to pay to ſuch perſon whom the judge or judges ſhall appoint to receive the ſame, they ſhall levy the ſame by warrant of diſtreſs, rendering the overplus, the reaſonable charges of diſtreſs and ſale being firſt deducted; the ſame to be paid to the proper officer of the place, to be applied to ſuch uſes as iſſues ſet on jurors or other fines ſet in ſuch courts are by charter, uſage, or preſcription applicable.

Penalty of recording perſons who did not appear.

If the clerk of aſſize, or other officer, ſhall record the appearance of any perſon who did not appear; he ſhall, on conviction before the judge of aſſize in a ſummary way, forfeit not exceeding 10 l. nor under 40 s. 3 *G.* 2. *c.* 25. *ſ.* 3.

Drawing jurors' names for trial.

Laſt of all; The name of each perſon ſummoned to try the iſſues of *niſi prius*, with his addition and place of abode, ſhall be written in ſeveral and diſtinct pieces of parchment or paper, as near as may be of equal ſize, and delivered to the marſhal by the under-ſheriff. And the ſame ſhall by the marſhal be rolled up, all, as near as may be, in the ſame manner, and put together in a box or glaſs to be provided for that purpoſe. And when any cauſe ſhall be brought on to be tried, ſome indifferent perſon by direction of the court, ſhall in open court draw out 12 of the ſaid parchments or papers one after another. And if any of the perſons whoſe names ſhall be ſo drawn, ſhall not appear, or be challenged and ſet aſide; then ſuch further number, until 12 be drawn who ſhall appear, and after all cauſes of challenge, ſhall be allowed as fair and indifferent. And the ſaid 12 perſons ſo firſt drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being ſworn, ſhall be the jury to try the cauſe. And the names of the perſons ſo drawn and ſworn, ſhall be kept apart by themſelves in ſome other box or glaſs to be kept for that purpoſe, till ſuch jury ſhall have given in their verdict, and the ſame is recorded, or until ſuch jury ſhall by conſent of the parties, or leave of the court, be

diſcharged. And then the ſame names ſhall be rolled up again, and returned to the former box or glaſs, there to be kept with the other names remaining at that time undrawn. And ſo *toties quoties*, as long as any cauſe remains then to be tried. Provided, that if any cauſe ſhall be brought on to be tried, before the jury in any other cauſe ſhall have brought in their verdict, or be diſcharged; the court may order 12 of the reſidue of the ſaid parchments or papers to be drawn as aforeſaid. *ſ.* 11, 12.

IV. Of the challenge of jurors.

And herein,

i. Of the ſeveral kinds of challenge.
ii. When the challenge is to be taken.
iii. How the challenge ſhall be tried.
iv. How panels may be reformed by the court, without challenge.

i. Of the ſeveral kinds of challenge.

Two kinds of challenge.

There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it ſtands *arrayed* in the *panel*, or little ſquare *pane* of parchment on which the jurors' names are written: or to the *polls*, by which are meant the ſeveral particular perſons or *heads* in the array. 1 *Inſt.* 156. 158

To the array.

Challenge to the *array*, is in reſpect of the partiality or default of the ſheriff, coroner, or other officer that made the return: And this is two-fold;

Principal challenge to the array.

(1) Principal challenge to the array: which if it is made good, is a ſufficient cauſe of exception, without leaving any thing to the judgment of the triers.

Cauſes of challenge of this ſort, are ſuch as theſe: If the ſheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintiff or defendant, the whole array ſhall be quaſhed. If the plaintiff or defendant have an action of battery againſt the ſheriff, or the ſheriff againſt either party, this is a good cauſe of challenge. So if the plaintiff or defendant have an action of debt againſt the ſheriff; but otherwiſe it is, if the ſheriff have an action of debt againſt either party. Or if the ſheriff have parcel of the land depending upon the ſame title. Or if the ſheriff, or his

his bailiff which returned the jury, be under the diſtreſs of either party. Or if the ſheriff, or his bailiff, be either of counſel, attorney, officer, or ſervant of either party; goſſip; or arbitrator in the ſame manner, and treated thereof. 1 *Inſt.* 156.

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quaſhed: But now by the 24 *G.* 2. *c.* 18 *ſ.* 4. no challenge ſhall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is a party.

And the ſubject may challenge the array againſt the king; as in traverſe of an office, he that traverſeth may challenge the array: And ſo it is in caſe of life. 1 *Inſt.* 156.

And where a ſubject may challenge the array, for unindifferency, there the king being a party may alſo challenge for the ſame cauſe. *Id.*

The array challenged on both ſides ſhall be quaſhed. *Id.*

(2) Challenge to the array for favour. He that taketh this muſt ſhew in certain the name of him that made it, and in whoſe time, and all in certainty. This kind of challenge, being no principal challenge, muſt be left to the diſcretion and conſcience of the triers. As if the plaintiff or defendant be tenant to the ſheriff, this is no pricipal challenge, but he may challenge for favour, and leave it to trial. So affinity between the ſon of the ſheriff and the daughter of the party, and the like, is no principal challenge, but to the favour; but if the ſheriff marry the daughter of either party, or the like, this (as hath been ſaid) is a principal challenge. *Id.* Challenge to the array for favour.

But where the king is party, one ſhall not challenge the array for favour; becauſe in reſpect of his allegiance, he ought to favour the king more. But if the ſheriff be a menial ſervant of the king, there the challenge is good. 1 *Inſt.* 156. By which ſeems to be meant, that ſuch challenge is not good, without ſhewing ſome actual partiality in the ſheriff. 2 *Haw.* 419.

But the king may challenge the array for favour. 1 *Inſt.* 156.

Challenge to the polls is threefold: To the polls.

(1) Peremptory. This is ſo called, becauſe a perſon may challenge peremptorily, upon his own diſlike, without ſhewing of any cauſe. Peremptory challenge to the polls.

This

This peremptory challenge ſhall not be allowed to the king: for it is provided by the 33 *Ed.* 1. *ſt.* 4. that he who challenges a juror for the king ſhall ſhew cauſe, and the truth thereof ſhall be inquired of. And this extends as well to criminal as civil cauſes. However, if the king challenge a juror, he need not ſhew any cauſe of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the perſon challenged. And if the defendant, in order to oblige the king to ſhew cauſe, preſently challenge all the reſt, yet it hath been adjudged, that the defendant ſhall be firſt put to ſhew all his cauſe of challenge, before the king need to ſhew any. 2 *Haw.* 413.

And this peremptory challenge is not allowable to the party againſt the king, but only in caſe of treaſon or felony, in favour of life. 1 *Inſt.* 156.

But in caſe of treaſon or felony, the priſoner by the common law might peremptorily challenge 35, which was under the number of three juries; but by the ſtatute of the 22 *H.* 8. *c.* 14. *ſ.* 6. the number is reduced to 20, in petit treaſon, murder, and felony; and in caſe of high treaſon, and miſpriſion of high treaſon, it was taken away by the ſtatute of the 33 *H.* 8. *c.* 23. but by the ſtatute of the 1 & 2 *P.* & *M.* *c.* 10. the common law was again revived for *any* treaſon, and therein the priſoner ſhall have his peremptory challenge to the number of 35. *Id.*

But as to all murders and other felonies, the ſtatute of the 22 *H.* 8. *c.* 14. taking away the peremptory challenge of above 20 ſtands in force. 2 *H. H.* 269. But if the party challenge above that number, he ſhall not have judgment of death, but his challenge ſhall be over-ruled, and he ſhall be put upon his trial. *H. Pl.* 259. 2 *H. H.* 270.

Principal challenge to the polls.

(2) Principal challenge to the polls: Where cauſe is ſhewn, but which if found true, ſtands ſufficient of itſelf, without leaving any thing to the triers.

Cauſes of principal challenge to the polls, are ſuch as theſe:

A peer is not to be ſworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his diſcharge. 1 *Inſt.* 156. 2 *Haw.* 415.

Want of freehold is a good cauſe of challenge. 1 *Inſt.* 156.

Alſo, if a perſon is an alien. *Id.*

If

If the juror be within the age of 21, it is a good cauſe of challenge. 1 *Inſt.* 157.

If a juror is above the age of 70, or is ſick, or is non-reſident in the county, he may ſue out a writ of privilege for his diſcharge; but if he be returned and appear, he can neither be challenged by the party, nor excuſe himſelf from not ſerving, if there be not enow without him. 2 *Haw.* 418.

If the juror be of blood or kindred to either party, this is a principal challenge; for that the law preſumeth that one kinſman doth favour another, before a ſtranger; and how far remote ſoever he is of kindred, yet the challenge is good. 1 *Inſt.* 157.

Affinity, or alliance by marriage, is a principal challenge, if the ſame continues, or iſſue be had; otherwiſe, it is but to the favour. *Id.*

If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge in our books. *Id.*

If the juror hath part of the land that dependeth upon the ſame title, it is a principal challenge. *Id.*

It hath been allowed a good cauſe of challenge, on the part of the priſoner, that the juror hath declared his opinion before-hand, that the party is guilty, or will be hanged, or the like. 2 *Haw.* 418.

Likewiſe if the juror gave a verdict before, for the ſame cauſe, or upon the ſame title or matter, though between other perſons. 1 *Inſt.* 157.

So likewiſe one may be challenged, that he was indictor of the plaintiff or defendant in the ſame cauſe; for ſuch a one, it may be thought, will not falſify his former oath. *Lamb.* 554. And if a grand juryman who was one of the indictors in the ſame cauſe, be returned upon the petit jury, and do not challenge himſelf, he ſhall be fined. 2 *H. H.* 309.

If a juror hath been an arbitrator, choſen by the plaintiff or defendant in the ſame cauſe; and hath been informed thereof or treated of the matter, this is a principal challenge; otherwiſe, if he were choſen indifferently by either of the parties. 1 *Inſt.* 157.

If he be of counſel, ſervant, or of fee, of either party, it is a principal challenge. *Id.*

Alſo, if a juryman, before he be ſworn, take information of the caſe, this is a cauſe of challenge. 2 *H. H.* 306.

If

If any, after he be returned, do eat and drink at the charge of either party, it is a principal cauſe of challenge. 1 *Inſt.* 157.

But it is not a principal challenge to a juror, but only to the favour, that the proſecutor was lately entertained at his houſe. 3 *Salk.* 81.

Actions brought by the juror againſt either of the parties, or by either of the parties againſt him, which imply malice or diſpleaſure, are cauſes of principal challenge; other actions, which do not imply malice or diſpleaſure, are but to the favour. 1 *Inſt.* 157.

In a cauſe where the parſon of the pariſh is party, and the right of the church cometh in debate, a pariſhioner is a principal challenge. *Id.*

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conſcience, this is no challenge at all, but lawful for him to do it. *Id.*

That the juror is a fellow-ſervant with either party, is no principal challenge but to the favour. *Id.*

If the juror be attainted or convicted of treaſon or felony, or for any offence to life or member, or in attaint for a falſe verdict, or for perjury as a witneſs, or in a conſpiracy at the ſuit of the king, or in any ſuit, (either for the king or for any ſubject,) be adjudged to the pillory, tumbrel, or the like, or to be branded or ſtigmatized, or to have any other corporal puniſhment, whereby he becometh infamous; theſe, and the like, are principal cauſes of challenge. 1 *Inſt.* 158.

So it is, if a man be outlawed in treſpaſs, debt, or any other action, for he is *ex lex*, and therefore not a lawful man. *Id.*

And old books have ſaid, that if he be excommunicated, he could not be of a jury. *Id.*

Challenge to the polls for favour.

(3) Challenge to the polls for favour. This is when either party cannot take any principal challenge, but ſheweth cauſes of favour, which muſt be left to the conſcience and diſcretion of the triers, upon hearing their evidence, to find him favourable, or not favourable. And the cauſes of favour are infinite. For all which, the rule of law is, that he muſt ſtand indifferent, as he ſtands unſworn. 1 *Inſt.* 157.

ii. When the challenge is to be taken.

No challenge can be taken either to the array, or to the polls, till a full jury have appeared. 2 *Haw.* 412.

He that hath divers challenges muſt take them all at once. 1 *Inſt.* 158.

If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. *Id.*

After challenge to the array, and trial duly returned, if the ſame party take a challenge to the polls, he muſt ſhew cauſe preſently. *Id.*

If a juror be formerly ſworn, if he be challenged, the party muſt ſhew cauſe preſently, and that cauſe muſt riſe ſince he was ſworn. *Id.*

When the king is party, the defendant that challengeth for cauſe muſt ſhew his cauſe preſently. *Id.*

But if a juror be challenged between party and party, and there be enough of the panel beſides; the cauſe of challenge needeth not to be ſhewed, unleſs the other ſide challenges *touts peravail.* Tr. p. Pais, 143.

If a man, in caſe of treaſon or felony, challenge for cauſe, and he be tried indifferent, yet he may challenge him peremptorily. 1 *Inſt.* 158.

The priſoner muſt take all peremptory challenges himſelf, even in caſes wherein he may have counſel. 2 *Haw.* 413.

The challenge to the array muſt be in writing (C); but where the challenge is to the polls, it is a ſhort way by a verbal challenge. *Tr. p. Pais,* 172.

iii. How the challenges ſhall be tried.

The challenge of him who firſt challenged ſhall be firſt tried. *Tr. p. Pais,* 144.

If the array be challenged, it lies in the diſcretion of the court how it ſhall be tried; ſometimes it is done by two coroners, and ſometimes by two of the jury, with this difference, that if the challenge be for kindred in the ſheriff, it is moſt fit to be tried by two of the jurors returned;

turned; if the challenge found in favour of partiality, then by any other two aſſigned thereunto by the court. 2 *H. H.* 275.

When any challenge is made to the polls, if it be before any jurors are ſworn, the court ſhall chuſe the triers; if two are ſworn, they ſhall try; and if they try one indifferent, and he be ſworn, then he and the two triers ſhall try another; and if another be tried indifferent, and he be ſworn, then the two triers ceaſe, and the two that be ſworn on the jury ſhall try the reſt: If the plaintiff challenge ten, and the defendant one, and the twelfth is ſworn, becauſe one cannot try alone, there ſhall be added to him one challenged by the plaintiff, and another by the defendant. *Finch.* 112. 1 *Inſt.* 158.

The trier's oath is, "*You ſhall well and truly try, whether* A. B. (the juryman challenged) *ſtand indifferent between the parties to this iſſue:* So help you God." 1 *Salk.* 152.

If the cauſe of challenge touch the diſhonour or diſcredit of the juror, he ſhall not be examined on his oath; but in other caſes, he ſhall be examined on his oath, to inform the triers. 1 *Inſt.* 158. 1 *Salk.* 153.

If the array be quaſhed againſt the ſheriff, the proceſs of *venire facias juratores* ſhall be directed to the coroners; if againſt any of the coroners, then proceſs ſhall be awarded to the reſt; if againſt all of them, then the court ſhall appoint certain eliſors, (ſo named *abeligendo*,) againſt whoſe return no challenge ſhall be taken to the array, becauſe they were appointed by the court; but he may have his challenge to the polls. 1 *Inſt.* 158.

iv. How panels may be reformed by the court, without challenge.

Beſides the challenges which may be taken by the plaintiff or defendant, it is enacted by the 3 *H.* 8. *c.* 12. that in caſes where the king is party, the juſtices of aſſize, or of the peace in ſeſſions, may reform the panels of jurors, by putting to, and taking out of the names of the perſons impanelled by their diſcretion; and if the ſheriff do not return the panel ſo reformed, he ſhall forfeit 20 l. half to the king, and half to him that ſhall ſue.

And

And this extends both to grand and petit juries. 2 *H. H.* 156.

And hence it is, that if a priſoner be arraigned before the judge that ſits upon the crown ſide, it is uſual for the judge to ſend for a jury to the judge of *niſi prius*, and when the jury is brought, the ſheriff returns them between the king and the priſoner; which is by virtue of this ſtatute. 2 *H. H.* 265.

V. Of the demeanor of jurors in giving their verdict.

Jurors to be kept without meat or drink.

By the law of *England*, a jury after their evidence given upon the iſſue, ought to be kept together in ſome convenient place, without meat or drink, fire or candle, and without ſpeech with any, unleſs it be the bailiff, and with him only if they be agreed. 1 *Inſt.* 227.

Bailiff ſworn to keep them.

And the bailiff ought to be ſworn to keep them together, and not to ſuffer any to ſpeak with them. 2 *H. H.* 296.

Whether eating and drinking ſhall avoid the verdict.

And if the jury after their evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict, it is fineable, but it ſhall not avoid the verdict; but if before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it ſhall avoid the verdict; but if it be given for the defendant it ſhall not avoid it, and ſo on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do paſs, it ſhall not avoid the verdict. 1 *Inſt.* 227.

In what caſes they may eat or drink.

But with the aſſent of the juſtices they may both eat and drink; as if any of the jurors fall ſick before they be agreed of their verdict, then by the aſſent of the juſtices he may have meat or drink, and alſo ſuch other things as be neceſſary for him and his fellows alſo, at their own coſts, or at the indifferent coſts of the parties, if they ſo agree: And if they cannot agree, the juſtices may in ſuch caſe ſuffer the jury to have both meat and drink for a time, to ſee whether they will agree. *Dr. & Str.* 158.

May re-examine witneſſes.

After their departure they may deſire to hear one of the witneſſes again, and it ſhall be granted ſo he deliver his teſtimony in open court; and alſo they may deſire to

to propound queſtions to the court for their ſatisfaction, and it ſhall be granted, ſo it be in open court. 2 *H. H.* 296.

May hear no evidences but in court.

But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in iſſue, or any evidence, or any writing touching the matter in iſſue, which was not given in evidence, it ſhall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, and ſo on the contrary. But if the jury carry away any writing unſealed, which was given in evidence in open court, this ſhall not avoid their verdict, albeit they ſhould not have carried it with them. 1 *Inſt.* 227.

Cannot be diſcharged without giving a verdict.

A jury charged and ſworn in a capital caſe, cannot be diſcharged (without the priſoner's conſent) till they have given a verdict. 2 *Haw.* 439. *Foſt.* 22. Sir *John Wedderburn*'s caſe.

And the king cannot be nonſuit, for he is in judgment of law ever preſent in court. 1 *Inſt.* 227.

May be fined for ſaying they are agreed, when they are not.

If a jury ſay they are agreed, and it being aſked who ſhall ſay for them, they ſay their foreman, but upon farther inquiry they are not agreed, they may be fined. 2 *H. H.* 309.

Caſting lots for their verdict.

If a jury caſt lots for their verdict, it ſhall be ſet aſide, and they ſhall be fined for the contempt. 3 *Keb.* 805. 2 *Lev.* 140. 205. 2 *Jones*, 83.

M. 12 *G. Hale* and *Cove.* The jury having ſat up all night agreed in the morning to put two papers into a hat, marked *Plaintiff* and *Defendant*, and ſo draw lots; *Plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict muſt be ſet aſide; but the queſtion was, Whether the defendant ſhould pay coſts? The court inclined to give the plaintiff coſts, comparing it to the caſe of a verdict againſt evidence; but at laſt it was agreed, that the coſts ſhould wait the event of a new trial. *Str.* 642.

In the caſe of *Vaſie* v. *Delaval*, *M.* 26 *G.* 3. it was determined upon a motion for a rule to ſet aſide a verdict where the jury had toſſed up for their verdict, that the affidavit of none of the jurymen themſelves could be admitted in evidence, in all of whom ſuch conduct is a very high miſdemeanor

miſdemeanor, but in every ſuch caſe the court muſt derive their knowledge from ſome other ſource, ſuch as from ſome perſon having ſeen the tranſaction through a window, or by ſome other means. *Durnf.* and *Eaſt*, 1 V. 11.

The jury may give a verdict without teſtimony, when they themſelves have conuſance of the fact. *Tr. p. Pais*, 279. 1 *Vent.* 67. Giving verdict without evidence.

But if they give a verdict on their own knowledge, they ought to tell the court ſo; but they may be ſworn as witneſſes; and the fair way is to tell the court before they are ſworn that they have evidence to give. 1 *Salk.* 405. Juror may be witneſs.

For certainly it is of dangerous conſequence, to receive a verdict againſt evidence given, on ſuppoſal that ſome of the jury knew otherwiſe, or on private information given by any juryman to the reſt, where he cannot be croſs examined. *Tr. p. Pais*, 209.

After they be agreed, they may in cauſes between party and party, if the court be riſen, give a private verdict before any of the judges of the court; and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court ſhall ſtand. 1 *Inſt.* 227. Private verdict.

But in criminal caſes of life or member, the jury can give no private verdict, but they muſt give it openly in court. *Id.*

In all cauſes, and in all actions, the jury may give either a general or a ſpecial verdict, as well in cauſes criminal as civil; and this court ought to receive a ſpecial verdict, if pertinent to the point in iſſue. 3 *Salk.* 373. Special verdict.

Thus if one be indicted for grand larceny, that is, for ſtealing goods above the value of 12 d. yet the jury may find ſpecially, that he is guilty, but that the goods are not above the value of 12 d. In which caſe he ſhall only have judgment of petty larceny. 1 *Haw.* 95.

Jurors are to try the fact, and the judges ought to judge according to the law that ariſeth upon the fact. 1 *Inſt.* 226. Jurors to try not the law, but the fact.

But if they will take upon them the knowledge of the law upon the matter, they may; yet it is dangerous, for if they miſtake the law, they run into the danger of an attaint; therefore to find the ſpecial matter is the ſafeſt way, where the caſe is doubtful. 1 *Inſt.* 228.

But if the jury find according to the direction of the judge in matter of law, although the judge be miſtaken, yet the jury ſhall not be liable to attaint. L. *Raym.* 470.

Jury may give a general verdict.

But by 32 *G.* 3. *c.* 60. After reciting, that doubts had ariſen, whether on the trial of an indictment or information for the making or publiſhing any libel, it was competent to the jury to give their verdict upon the whole matter in iſſue: It is declared, that on every ſuch trial, the jury may give a general verdict of guilty or not guilty upon the whole matter in iſſue; and ſhall not be required or directed by the court or judge, to find the defendant guilty, merely on the proof of the publication by ſuch defendant of the paper charged to be a libel, and of the ſenſe aſcribed to the ſame in ſuch indictment or information. *ſ.* 1.

Court to give their opinion.

Provided, that on every ſuch trial, the court or judge ſhall, according to their diſcretion, give their opinion and directions to the jury on the matter in iſſue, in like manner as in other criminal caſes. *ſ.* 2.

Jury may find a ſpecial verdict.

Provided alſo, that nothing herein ſhall extend to prevent the jury from finding a ſpecial verdict in their diſcretion, as in other criminal caſes. *ſ.* 3.

Defendant may move in arreſt of judgment.

And in caſe the jury find the defendant guilty, he may move in arreſt of judgment, in like manner as before the paſſing of this act. *ſ.* 4.

Finding againſt evidence.

It hath been adjudged, that if the jury acquit a priſoner of an indictment of felony againſt manifeſt evidence, the court may, before the verdict is recorded, but not after, order them to go out again, and reconſider the matter; but this by many is thought hard, and ſeems not of late years to have been ſo frequently practiſed as formerly. However it is ſettled, that the court cannot ſet aſide a verdict which acquits a defendant, of a proſecution properly criminal, as it ſeems that they may a verdict that convicts him, for having been given contrary to evidence, and the directions of the judge, or any verdict whatſoever for a miſ-trial. 2 *Haw.* 442.

Varying from the verdict.

After the verdict recorded the jury cannot vary from it; but before it be recorded, they may vary from the firſt offer of their verdict, and that verdict which is recorded ſhall ſtand. 1 *Inſt.* 227.

Verdict finding an impoſſibility.

A verdict finding an impoſſible matter ſhall not be void, if at the ſame time it find the ſubſtance of

the indictment; but the ſurplus ſhall be rejected. 1 *Hawk.* 77.

Verdict ſhall not be taken ſo ſtrictly as pleadings; but the ſubſtance of the thing in iſſue ought to be always found. 3 *Salk.* 373. Verdict how far to be taken ſtrictly.

It is ſaid, that if the jurors agree not, before the departure of the juſtices of gaol delivery into another county, the ſheriff muſt ſend them along in carts, and the judge may take and record their verdict in a foreign county. 2 *H. H.* 297. *Tr. p. Pais*, 274. 285. 1 *Vent.* 97. Where they cannot agree.

But if the caſe ſo happen, that the jury can in no wiſe agree, as if one of the jurors knoweth in his own conſcience the thing to be falſe, which the other jurors affirm to be true, and ſo he will not agree with them in giving a falſe verdict, and this appeareth to the juſtices by examination; the juſtices (as it ſeemeth) in ſuch caſe may take ſuch order in the matter, as ſhall ſeem to them by their diſcretion to ſtand with reaſon and conſcience, by awarding a new inqueſt, or otherwiſe, as they ſhall think beſt by their diſcretion, like as they may do, if one of the jury die before the verdict. *Dr.* and *Stud.* 158.

M. 4 *G.* 3. *K. & Gould.* The defendant was indicted for murder. The jury were ſworn, and part of the evidence given, but before the trial was over, one of the jurymen was taken ill, went out of court with the judge's leave, and preſently after died. The judge doubting whether he could ſwear another jury, diſcharged the eleven, and left the priſoner in gaol. The court was moved for a writ of *habeas corpus* to bring up the priſoner that he might be diſcharged, having been once put upon his trial. This being a new caſe, the court ſaid they would adviſe with the other judges upon it; and afterwards they all agreed, that the priſoner might be tried at the next aſſizes, or the judge might have ordered a new jury to have been ſworn immediately.

VI. Of the indemnity and puniſhment of jurors.

If a man aſſault or threaten a juror, for giving a verdict againſt him, he is highly puniſhable by fine and impriſonment; and if he ſtrike him in the court, in the preſence of the judge of aſſize, he ſhall loſe his hand, and his goods, Threatening a juror.

and profit of his lands during life, and ſuffer perpetual impriſonment. 1 *Haw.* 57, 58.

Juror not appearing.

Where more than one of the perſons returned on a jury do appear, but not a ſufficient number to take an inqueſt, and ſome of the others come within view of the court, or into the ſame town in which the court is holden, but refuſe to come into the court to be ſworn; upon proof of ſuch matter, the court may, at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of ſuch defaulter's lands, and after ſuch inquiry made, either ſummon them to appear, on pain of forfeiting ſuch ſum as their lands have been found to be worth by the year, or ſome leſſer ſum, or impoſe a fine of the like ſum upon them, without any farther proceeding. But it ſeems, that ſuch juror ſhall be liable to loſe his iſſues only for ſuch default, and not the yearly value of his lands, unleſs the party pray it: But a juror who hath actually appeared, and after makes default, is ſaid to be ſubject to ſuch forfeiture of the yearly value of his lands, whether the party pray it or not; becauſe his contempt appears to the court by its own record; yet even in this caſe, the court in diſcretion will ſometimes only impoſe a ſmall fine. Alſo it ſeems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to loſe his iſſues, or to be amerced, but not to be fined. 2 *Haw.* 146.

And by the 3 *G.* 2. *c.* 25. *ſ.* 13. In cauſes of *niſi prius*, every perſon whoſe name ſhall be drawn, and who ſhall not appear, after being openly called three times, ſhall, on oath made of his having been lawfully ſummoned, forfeit not exceeding 5 l. nor leſs than 40 s.; unleſs ſome reaſonable cauſe of abſence be proved, by oath or affidavit, to the ſatisfaction of the judge.

Where a grand jury may be fined for not finding a bill.

If the grand jury at the aſſizes or ſeſſions will not find a bill, the court may impanel another inqueſt (by the 3 *H.* 7. *c.* 1.) to inquire of their concealments, and thereupon ſet fines upon them; but it ſeemeth that fines ſet upon grand inqueſts in any other manner, are not warrantable by law; for the privilege of an *Engliſhman* is, that his life ſhall not be drawn in danger without due preſentment or indictment, and this would be but a ſlender ſcreen or ſafeguard, if every juſtice of the peace, or judge of aſſize, may make the grand jury preſent what he pleaſes, or otherwiſe fine them. 2 *H. H.* 160, 1.

If any juror do take of either party to give his verdict, he ſhall on conviction by bill or plaint, before the court where the verdict ſhall paſs, forfeit ten times as much as he has taken, half to the king, and half to him that ſhall ſue. 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. *c.* 8. 38 *Ed.* 3. *ſt.* 1. *c.* 12. Juror taking a bribe.

It ſeems to be certain, that no one is liable to any proſecution whatſoever, in reſpect of any verdict given by him in a *criminal* matter, either upon a grand or petit jury; for ſince the ſafety of the innocent, and puniſhment of the guilty doth ſo much depend upon the fair and upright proceedings of jurors, it is of the utmoſt conſequence that they ſhould be as little as poſſible under the influence of any paſſion whatſoever. And therefore, leſt they ſhould be biaſſed with the fear of being haraſſed by a vexatious ſuit, for acting according to their conſciences, the law will not leave any poſſibility for a proſecution of this kind. And as to the objection, that an attaint lies againſt a jury for a falſe verdict in a civil cauſe, and that there is as much reaſon to allow of it in a criminal one; it may be anſwered that in an attaint in a civil cauſe, a man's property is only brought into queſtion a ſecond time, and not his liberty or life. 1 *Haw.* 191. L. *Raym.* 469. Whether a juror may be proſecuted for a verdict in a criminal matter.

But where the jurors give a falſe verdict upon an iſſue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attaint in the king's bench or common pleas, upon which 24 of the beſt men of the county are to be jurors, who are to hear the ſame evidence which was given to the petit jury, and as much as can be brought in affirmance of the verdict, but no other againſt it. And if theſe 24 who are called the grand jury, find it a falſe verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party ſhall be infamous, ſo as never to be received to be a witneſs, or a juror; ſhall forfeit his goods and chattels; and his lands and tenements ſhall be taken into the king's hands; his wife and children caſt out of doors; his houſes proſtrated; his trees rooted up; his meadows ploughed up; and his body impriſoned. And ſeeing all trials of real, perſonal, and mixt actions depend upon the oath of 12 men, prudent antiquity inflicted a ſtrange and ſevere puniſhment upon them, if they were attainted of perjury. 2 *Inſt.* 294. *Read.* Jur. Attaint in a civil cauſe.

But now by the ſtatute of 23 *H.* 8. *c.* 3. The ſeverity of this puniſhment is moderated, if the writ of attaint be grounded upon that ſtatute; but nevertheleſs, the party grieved may at his election, either bring his writ of attaint upon that ſtatute, or at the common law. *Tr. p. Pais*, 222.

But this proceeding ſeems to be entirely diſuſed at this day; and in the place of attaint, motions are now uſually made for new trials, when a verdict is againſt evidence. *Wood*, *b.* 4. *c.* 4. 3 *Blackſt.* 389.

But there can be no new trial for or againſt the king. *Tr. p. Pais*, 210.

Whether they may be fined for their verdict.

It ſeems to be the current opinion of the old books, that juries are not ſubject to any proſecution for a falſe verdict except by way of attaint: And there ſeems to be very few ancient precedents for the puniſhment either of a grand or petit jury, merely for giving a verdict againſt evidence, or the direction of the court, either in a capital or civil matter. 2 *Haw.* 147.

And the fining and impriſoning of jurors for giving their verdict, hath ſeveral times been declared in parliament an illegal and arbitrary innovation, and of dangerous conſequence to the government, and the lives and liberties of the ſubject. 2 *Keb.* 180. *Read.* Jur.

And in *Buſhel*'s caſe, it was reſolved by all the judges, upon a full conference together, that a jury is not finable for going againſt their evidence, where an attaint lies. And where an attaint doth not lie, L. *Vaughan* ſays thus: "That the court could not fine a juryman at the com-"mon law, where attaint did not lie, I think to be the "cleareſt poſition that ever I conſidered, either for au-"thority or reaſon of law." And one reaſon for this is, becauſe the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evidence than what is ſhewn in court; they are of the vicinage; the judge is a ſtranger; they may have evidence from their own perſonal knowledge that the witneſſes ſpeak falſe, which the judge knows not of; they may know the witneſſes to be ſtigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and ſo the judge knew as much as they, yet they might make different concluſions, as oftentimes two judges do; and therefore as it would be a ſtrange and abſurd thing, to puniſh one judge for differing with another in opinion or judgment,

judgment, ſo it would be worſe for the jury, who are judges of the fact, to be puniſhed for finding againſt the direction of him who is not judge of the fact. *Tr. p. Pais*, 325. L. *Vaugh.* 135.

And to ſay the truth, ſays L. *Hale*, it would be the moſt unhappy caſe that could be to the judge, if he at his peril muſt take upon him the guilt or innocence of the priſoner; and if the judge's opinion muſt rule the matter of fact, the trial by jury would be uſeleſs. 2 *H. H.* 315.

But what if a jury give a verdict againſt all reaſon, convicting or acquitting a perſon indicted of felony, what ſhall be done? If the jury *convict* a man, againſt or without evidence, and againſt the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury acquit him in like manner, the court may ſend them back again (and ſo in the former caſe) to conſider better of it, before they record the verdict; but if they are peremptory in it, and ſtand to their verdict, the court muſt take their verdict and record it. 2 *H. H.* 309, 310.

A. Warrant for the returning liſts of jurors.

Weſtmorland. { To *Henry Holme*, gentleman, high conſtable of the Weſt Ward within the county aforeſaid.

AT the general quarter ſeſſions of the peace of our ſovereign lord the king, holden at ——— *in and for the ſaid county, the* ——— *day of* July, *in the* ——— *year of the reign of our ſaid ſovereign lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before us* ——— *eſquires, and others our aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed:*

Theſe are to require you, upon ſight hereof, to iſſue forth your precepts to all the petty conſtables within your ſaid ward, thereby directing and requiring them, to make and return

true

true lists of jurors, according to the form or to the effect here following; that is to say,

Westmorland, West Ward. } To the constable of ——

BY *virtue of a warrant from his majesty's justices of the peace in and for the said county, at their general quarter sessions assembled, unto me directed, you are hereby required to make a true list in writing, containing the names and places of abode, together with the titles and additions, of all persons, between the ages of* 21 *and* 70, *dwelling within your constablewick, qualified to serve upon juries; that is to say, of every such person who hath in his own name, or in trust for him, within the county aforesaid,* 10*l. a year above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, or in all or any of them, in fee simple, fee tail, or for the life of himself, or some other person; or having land in possession in his own right of* 20*l. a year above the reserved rent, being held by lease for* 500 *years or more, or for* 99 *years, or any other term determinable on one or more lives: in order to the making of which list, you may, if you think it needful, apply to any parish officer, who shall have in his custody any of the rates for the poor or land tax, and from thence take the names of such persons so qualified. Which list so being made as aforesaid, you are required, upon two or more* Sundays, *at least* 20 *days before* Michaelmas *next, to fix on the door of the church or chapel, and of every other publick place of religious worship within your parish or other precinct; and leave at the same time a duplicate thereof with a churchwarden or overseer of the poor, to be perused by the parishioners* gratis. *And the said list you are also further required to deliver in at the next general quarter sessions of the peace, to be holden in and for the said county, in open court; or otherwise, you may in the mean time apply to one of his majesty's justices of the peace in and for the said county, and in his presence subscribe the said list, and attest the truth thereof upon oath; and the same (being first also signed by the said justice) you may deliver to me, to be by me delivered in at the said next general quarter sessions. Given under my hand at* Barnskew *in the said county, the —— day of —— in the —— year ——.*

Henry Holme *High Constable.*

And

And this you the ſaid high conſtable are in no wiſe to omit, upon the peril that ſhall enſue thereof. Given under our hands and ſeals the day and year firſt above written.

B. The form of a writ to the ſheriff to ſummon jurors, for the trial of an iſſue joined; by the 4 & 5 *W.* *c.* 24. *ſ.* 15.

GEORGE *the third, &c. To the ſheriff of* ——— *greeting. We command you that you do not omit by reaſon of any liberty within your county, but that you enter therein, and cauſe to come before* ——— *twelve good and lawful men of the vicinage of* ——— *whereof every one hath ſuch lands, tenements, or rents, as will qualify them to ſerve upon juries, and who are neither of affinity to* ——— (the plaintiff) *nor to* —— (the defendant); *to hear and do thoſe things, which on our behalf ſhall be then and there enjoined them: And have you then there this precept. Witneſs* A. B. *and* C. D. *at* ——— *the* ——— *day of* ———

Note; The general precept for ſummoning jurors to the ſeſſions, is contained in the precept for ſummoning the ſeſſions, in the title Seſſions.

C. Challenge to the array, becauſe the ſheriff is of kindred to one of the parties; from *Coke*'s Entries.

AND now at this day, to wit ——— *came the aforeſaid* A. *the plaintiff, and* B. *the defendant, by their attornies, and the juors were impanelled and demanded, and came, and thereupon the aforeſaid* B. *challengeth the array of the panel aforeſaid, becauſe he ſaid that the panel was arrayed by one* John Zouch, *knight, now and at the time of making the array aforeſaid ſheriff of the ſaid county of* Derby, *which ſaid ſheriff is a kinſman of the aforeſaid* John Maners (*the plaintiff*); *to wit, the ſon of* George Zouch, *eſquire, ſon of* John Zouch, *knight, ſon of* John Zouch, *eſquire, ſon of* William *lord* Zouch, *ſon of* Alan *lord* Zouch, *ſon of* William *lord* Zouch, *ſon of* Elizabeth *daughter of* William *lord* Roos, *father of* William *lord* Roos, *father of* Thomas *lord* Roos, *father*

father of Eleanor *mother of* George Maners, *knight, father of* Thomas *earl of* Rutland, *father of the aforeſaid* John Maners. *And this he is ready to verify, whereupon he prayeth judgment, and that the ſaid panel may be quaſhed. Which ſaid challenge by* —— *and by* —— *triers, to this choſen and ſworn, is found true. And therefore let the panel aforeſaid be quaſhed and amoved,* &c. Tr. p. Pais, 160.

Challenge becauſe the panel was returned at the inſtance of the party.

And upon this the ſaid —— *challenges the array of the ſaid panel, becauſe he ſays that the panel was arrayed by one* J. S. *eſquire, late ſheriff of the county of* —— *aforeſaid, at the nomination of the ſaid* —— *and in his favour; which ſaid challenge, by triers thereof ſworn, is found true.*

For other forms of challenges, and proceedings thereupon, ſee *Tr. p. Pais*, 159—184.

Corrupting or influencing jurymen. See *Embracery*, under title Maintenance.

Juſtifiable homicide. See Homicide.

THE END OF THE SECOND VOLUME.

ERRATA.

Page 9. line 6. *for* Hambrough *read* Hainborough
81. — 16. *for* 35 G. 3. *read* 37 G. 3.
176. — 17. *for* fiſh cured *read* fiſh-curer
181. — 40. *for* this *read* his
441. — 25. *dele the parentheſes*
595. — 16. *for* Id. read 13 G. 3. c. 78. ſ. 1.
596. — 19. *for* Durnf. & Eaſt, 7 V. 169. *read* 13 G. 3. c. 78. ſ. 1.
747. — 2. *for* omitting any liſt *read* omitting in any liſt
755. margin, *for* to *read* of
705. line 9. *for* were *read* are
773. — 3. *for* 33 G. 3. *read* 38 G. 3.
785. — 24. *for* commiſſion *read* commiſſioners
32. *for* Id. *read* 20 G. 2. c. 3. ſ. 11.
848. — 17. *for* c. 24. *read* c. 4.

Printed by A. Strahan, Law Printer to His Majeſty,
Printers Street, London.